

3879chr1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

v.

12 CR 626 (ER)

4 RAYMOND CHRISTIAN a/k/a

"Reckless"

5 GLENN THOMAS, a/k/a "Gucci"

TYRELL WHITAKER, a/k/a "Bow Wow"

Defendants

6 -----x

New York, N.Y.

August 7, 2014

9:18 a.m.

9 Before:

HON. EDGARDO RAMOS

District Judge

11 APPEARANCES

12 PREET BHARARA

United States Attorney for the

13 Southern District of New York

ANDREW BAUER

14 KAN M. NAWADAY

Assistant United States Attorney

15 DAVID S. GREENFIELD

and

16 ANTHONY STRAZZA

17 Attorneys for Defendant Christian

18 LAW OFFICES OF DON BUCHWALD

Attorney for Defendant Thomas

19 DON D. BUCHWALD

20 KELLEY DRYE & WARREN LLP

Attorney for Defendant Thomas

21 LEVI DOWNING

22 GEORGE ROBERT GOLTZER

and

23 YING STAFFORD

Attorneys for Defendant Whitaker

24 -- also present--

S.A. Andrei Petron - FBI

3879chr1

Trial

1 (In open court)

2 (Trial resumed; jury not present)

3 MR. NAWADAY: Good morning your Honor there is one
4 issue we wanted to raise. It's with respect to defendant
5 Thomas' Exhibit B1 which was the ballistics report.

6 THE COURT: Yes.

7 MR. NAWADAY: We would like to move to redact the
8 notations on the report which say -- list of people's names and
9 that they're suspects.

10 Our understanding of the exception is that the
11 exception is allowed to put in the out-of-court statements,
12 personal observations of a person like Dennis Lyons, the
13 ballistics technician who prepared this report. And we have no
14 quarrel with his remarks, his conclusions about the things he
15 personally observed, which appear to be the tests he conducted
16 on the ballistics.

17 But part of the report is basically listing who the
18 suspects are. And that comes -- it has to come not from Dennis
19 Lyons that prepared the report's personal observations but
20 basically as a way to track the case as it goes through the New
21 York State Police laboratory.

22 I can hand up a copy of defendant Thomas' Exhibit B1
23 so your Honor can see what we're talking about. We did raise
24 this with defense counsel last night. I spoke briefly with
25 Mr. Buchwald this morning. He objects to redacting those

3879chr1

Trial

1 portions. I think it would be misleading to the jurors if they
2 saw these statements that, you know, Raymond Christian was a
3 suspect; that a man named Treyvon Hall was a suspect.
4 Mr. Lyons has no direct personal knowledge of that. He has no
5 personal observations he recorded to put that there.

6 I don't think it's appropriate for that portion of
7 defendant Thomas' Exhibit B1 to be before the jury. And I
8 don't believe that the report has been published to them at
9 this stage anyway.

10 THE COURT: I also note that B1 does not include the
11 names Glenn Thomas and Tyrell Whitaker which may account for
12 the reduction to redact.

13 MR. BUCHWALD: That's right. It does not, as of
14 March 17. And it's undisputed as of March 17 the following
15 year. It's undisputed I believe from the evidence that they
16 weren't suspects. They weren't named until May 13 is the first
17 time or May 20 is the first time that names are ever mentioned.
18 So it, obviously, is significant to us, your Honor.

19 Our first response is many of us regret not having
20 made a particular objection at a time when something was
21 offered. But once it's in, it's in. And I believe that they
22 waived an objection to the extent that this is a separate
23 hearsay objection as I understand. The relevance of this, I
24 think is clear. Your Honor has stated what it is. Our
25 clients, the two clients were not suspects.

3879chr1

Trial

1 It will be absolutely clear, as soon as Mr. Baynes
2 testifies, that Baynes, Vassel, Cromardie, Laquavious Boykin,
3 Raymond Christian, Jamar Mallory, were all suspects because
4 they're all mentioned by Baynes at one time or another in one
5 of his various versions on December 15. So that's going to be
6 clear that they were suspects.

7 Michael Moore -- Michael Monroe, as I understand,
8 lives upstairs at some point so -- and I don't think he was
9 present at the time of the robberies, or would have been
10 natural that he would be a suspect at the time. And Treyvon
11 Hall is the one other person.

12 And certainly I'm not, and I don't know what the
13 position of the others are, I'm not going to be contending that
14 Treyvon Hall is -- I think we outlined in our opening the
15 number of people who are implicated in this by the various
16 witnesses who are going to testify. Treyvon Hall wasn't in my
17 list.

18 I think it will be easy to disabuse the jury -- there
19 isn't going to be any kind of surprise here. And we would have
20 had much more extensive cross-examination of Mr. Frederick.

21 THE COURT: Why? What does Mr. Frederick have to do
22 with who the government is to believe was a suspect in
23 March 17, 2011.

24 MR. BUCHWALD: Mr. Frederick -- what this list is --
25 this is simply a returning of the list -- Newburgh sends a list

3879chr1

Trial

1 up to Albany of -- with the exhibits. This is just -- it's
2 just repeating the subject line. It's a repetition of the
3 subject line.

4 THE COURT: I understand that. I just don't
5 understand --

6 MR. BUCHWALD: Albany sends it back to Newburgh.

7 THE COURT: I just don't understand your comment that
8 this would have required much more extensive cross-examination
9 of Mr. Frederick when all he did was collect pieces of evidence
10 at a particular location.

11 MR. BUCHWALD: He collected swabs from these people.

12 THE COURT: Right. But he doesn't know who was
13 involved. He doesn't know the names of the individuals. He
14 doesn't know who the suspects were. There would have been
15 absolutely nothing to cross him on because he would have had no
16 knowledge regarding any of these names.

17 But that aside, let me ask Mr. Nawaday: How is the
18 government prejudiced? What's going to come out is that at
19 some point after March 17 several other individuals who are
20 identified as suspects -- so what, that, you know, three months
21 after the incident they had not yet been identified as such?

22 MR. NAWADAY: Your Honor I think the point is that by
23 having this in an official document that appears official it's
24 misleading to the jury. It will call -- it asks the jury and
25 invites the jury to speculate about other people who may have

3879chr1

Trial

1 been involved.

2 I don't doubt that -- I don't know that the defense
3 will say their defense is, yes, there were five people involved
4 or seven people involved but it wasn't my guy. And then there
5 are these other names there that have not been mentioned. And
6 it's in an official document that says they are a suspect. So
7 it just, in our view, calls for jury confusion.

8 I don't think Mr. Buchwald has named any nonhearsay
9 exception that allows these particular statements on this
10 report to come in. To the extent Mr. Buchwald is saying that
11 we've waived the objection, I don't think there's anything in
12 the rules that says that the judge, district judge can't make
13 an evidentiary ruling and amend his evidentiary ruling
14 afterwards.

15 Frankly, Mr. Buchwald showed us -- this is our
16 document, but Mr. Buchwald showed us this document basically
17 right before he was going to use it. And it kind of -- it did
18 catch us off guard. And frankly, I think we just ask your
19 Honor reconsider your ruling and amend the ruling to -- so that
20 this portion can be redacted to prevent any confusion before
21 the jury.

22 THE COURT: I'm not going to amend the ruling. But I
23 will grant the government's requests that these names be
24 redacted. I do find -- I do believe that the inclusion here,
25 first of all, has nothing to do with the subject matter or the

3879chr1

Trial

1 substance of what Mr. Lyons was required to do, the fact that
2 names were provided had nothing to do -- and I'm basing this
3 purely on logic and common sense -- that the fact that suspects
4 were named or not named did not affect or would not affect the
5 substance of the analysis that Mr. Lyons would have been
6 required to do. There is a danger that the jury might become
7 confused and distracted by the fact that there is a list of
8 names, some of whom have not been charged or will not be
9 charged or who may not even be mentioned.

10 So the names of the suspects will be redacted.

11 MR. BUCHWALD: Your Honor, might I ask -- we haven't
12 shown it to the jury yet -- your Honor reserve on that, on the
13 representation that we're not going to show it to the jury
14 because there may be other evidence that is developed. And I
15 would ask for an opportunity to cross-examine Mr. Frederick a
16 bit longer after Mr. Greenfield is finished and others.

17 THE COURT: Well let's --

18 MR. BUCHWALD: It's not confusing. And so rather than
19 redacting it now, our representation is it's not going to go --
20 we're not going to show it to the jury at this point and your
21 Honor can make a ruling later in the case if your Honor thinks
22 it will be confusing under the circumstances.

23 THE COURT: I suppose there is no harm in reserving
24 decision but I cannot imagine any relevant cross-examination of
25 Mr. Frederick concerning these names.

3879chr1

Trial

1 MR. BUCHWALD: Let me try.

2 THE COURT: I'll reserve. But I can't imagine a set
3 of circumstances pursuant to which that type of
4 cross-examination or cross-examination of Mr. Frederick
5 concerning these names, how they came to be in the report,
6 etc., would be relevant.

7 And in that case it's almost 9:30. Are we ready to
8 bring the jury out in a couple of minutes otherwise or is there
9 anything else?

10 MR. NAWADAY: Nothing else. Should we have the
11 witness on the stand, your Honor.

12 THE COURT: Sure. Let's just get a status of where
13 the jury is. See if they're all here.

14 Who is on the stand now, currently?

15 MR. GREENFIELD: Frederick.

16 THE COURT: He should start making his way into the
17 courtroom if he's not.

18 PETER FREDERICK, resumed

19 THE COURT: Good morning, sir.

20 THE WITNESS: Good morning.

21 THE COURT: We're bringing the jury out.

22 (Continued on next page)
23
24
25

3879chr1

Trial

1 (Jury present)

2 THE COURT: Good morning, everyone. Please be seated.

3 It's always interesting to me to see at which point in a trial
4 the jury figures out pretty much how to march in so that
5 they're not stepping over each other to get to their chairs.

6 Ladies and gentlemen, Mr. Frederick is still on the
7 stand.

8 Mr. Frederick, you are reminded that you are still
9 under oath.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Greenfield.

12 MR. GREENFIELD: Thank you, Judge.

13 CROSS-EXAMINATION CONTINUED

14 BY MR. GREENFIELD:

15 Q. Good morning, Detective Frederick.

16 A. Good morning, sir.

17 Q. Yesterday I was asking you a series of questions about when
18 items were bagged at the scene of the crime. Do you recall
19 that?

20 A. Yes, sir.

21 Q. And you -- I think it must have been my question being
22 unclear but I'd like to go back to that portion of my
23 examination and try to clarify something with you, okay?

24 A. Yes, sir.

25 Q. The first time you were at the scene is approximately

3879chr1

Frederick - cross

1 1 a.m., 1:30, something like that?

2 A. Yes, sir.

3 Q. And you see the knife on the ground?

4 A. Yes, sir.

5 Q. Correct. And you box it at that time?

6 A. It was put in a paper bag, transported to the station and
7 it was then placed in the box.

8 Q. But clearly it was bagged and now in a sealed environment
9 as of approximately 1:30 a.m. on the early morning hours of
10 December 15, correct?

11 A. It was not sealed. It was placed in a bag and transported
12 to the station.

13 Q. And it was never sealed at the scene?

14 A. No, sir.

15 Q. It was sealed back at the headquarters office?

16 A. Yes, sir.

17 Q. Is that true for every piece of evidence that was gathered
18 at 54 Chambers Street?

19 A. That's correct.

20 Q. Nothing was sealed at 45 Chambers Street?

21 A. Nothing was sealed on the scene, sir.

22 Q. Where were all these bags stored?

23 A. As we were collecting evidence we were lining them up in
24 the first room to the left, the empty room.

25 Q. And you were just putting them in there as you completed

3879chr1

Frederick - cross

1 the bagging process; is that what you're saying?

2 A. Yes, sir.

3 Q. Do you recall as you sit on the stand now what time it is
4 that you retrieved item No. 8?

5 Would you like to look at 3524-26 to refresh your
6 recollection?

7 A. I would, sir.

8 Q. Please do.

9 A. Item No. 8, the white gloves, sir?

10 Q. Yes.

11 A. Are you asking what time it was sealed or what time it was
12 collected?

13 Q. The time it was collected.

14 A. Collection time is 14:37.

15 Q. And as soon as you collect that, based on your testimony
16 yesterday, you now change your booties and your gloves and
17 everything else; is that correct?

18 A. Gloves.

19 Q. Just the gloves? That's it?

20 A. Yes. We don't strip.

21 Q. You carry these gloves in your pocket as go along?

22 A. No. We have a box in there with us.

23 Q. And then when is it that the next item is seized?

24 A. Item No. 9 would be projectile fragment.

25 Q. Now were you seizing these items or collecting these items

3879chr1

Frederick - cross

1 as you went further and further and further into the apartment
2 or into -- yeah I guess it's an apartment -- in a numerical
3 order, item No. 1 being the knife that was seized; No. 2, blood
4 swab that was near the knife, so on and so forth. So as you're
5 going further and further into the apartment you're collecting
6 the items as you go? You weren't hopscotching back and forth,
7 were you?

8 A. Without reviewing this entire document and looking at every
9 single time that's listed, I wouldn't be able to answer that.

10 Q. But every time that you took an item from the scene, you
11 put it in a bag and then changed the gloves?

12 A. Anytime it was something that could possibly have some kind
13 of DNA value, yes. When we got to several shell casings, we
14 wouldn't change our glove every time we picked up a shell
15 casing.

16 Q. Now were fingerprints retrieved from the scene of the
17 crime?

18 A. I don't believe there were any lifts that came.

19 Q. That was not my question, sir.

20 My question to you is were fingerprints retrieved from
21 the scene of the crime?

22 A. No, sir.

23 Q. Say that again.

24 A. No, sir.

25 Q. Did you, in item No. 35, would you look at No. 35? What is

3879chr1

Frederick - cross

1 that? If it refreshes your recollection --

2 A. It's listed as several plates.

3 Q. What's that?

4 A. Several plates.

5 Q. What does that mean?

6 A. Several plates. Like eating -- dishes.

7 Q. Eating plates?

8 A. Yes, sir.

9 Q. And did you retrieve or take fingerprints off the plate?

10 A. At headquarters, yes, sir.

11 Q. So you took the plates to headquarters? Is that it?

12 A. Yes, sir.

13 Q. How many plates did you take to headquarters or other items
14 to headquarters for the removal of latent fingerprints?

15 A. There was multiple items. I don't recall off the top of my
16 head.

17 Q. That was item 33. What about item 34? Does -- reading the
18 document I have before you, does it refresh your recollection
19 as to the retrieval of latent prints?

20 A. It's just listed as 13 items for fingerprint processing.

21 Q. And that -- where were those 13 items? Do you recall?

22 A. In the residence, throughout the residence.

23 Q. So you lifted fingerprints in that particular -- at that
24 particular time?

25 A. No, sir. These 13 items were taken back to headquarters

3879chr1

Frederick - cross

1 and in our processing area is where all the latent work was
2 done.

3 Q. By looking at the report in front of you, could you
4 estimate how many latent prints or possible latent prints were
5 brought back to police headquarters for the lifting of those
6 prints?

7 A. I'm sorry. Could you rephrase that.

8 Q. Start with item 33. That deals with fingerprints, correct?

9 A. Yes, sir.

10 Q. How about item 34?

11 A. Yes, sir.

12 Q. 35?

13 A. Yes, sir.

14 Q. 36?

15 A. Yes, sir.

16 Q. Would it be fair to say that between those four items you
17 identified what could be 67 latent fingerprints; is that right?

18 A. No, sir.

19 Q. What does that mean?

20 A. This is -- it says 21 items for fingerprint processing,
21 there were 21 items that were brought in and then they were
22 dusted for fingerprints.

23 Q. Well what were the items? Do you have a recollection?

24 A. Off the top of my head, I do not.

25 Q. Well did you write a report for that day? At the end of

3879chr1

Frederick - cross

1 the day when the day was over, did you prepare a report to your
2 superior officers saying what you did that day and reduce it to
3 writing on that same day?

4 A. No, sir.

5 Q. Did you do it the next day?

6 A. No, sir.

7 Q. Did you do it any day prior to today?

8 A. No, sir.

9 Q. So you did not prepare any report whatsoever dealing with
10 what you did during the course of your examination at the scene
11 of the crime back on December 15, 2010?

12 A. Correct.

13 Q. Is it your practice not to write reports?

14 A. This chain of custody --

15 Q. Yes or no.

16 A. This chain of custody is considered our report.

17 Q. Say that again.

18 A. This chain of custody is considered our report.

19 Q. That is considered your report?

20 A. Yes, sir.

21 Q. So when you say 13 items, what is your recollection of what
22 the 13 items were?

23 A. Anything that I felt that could have a possible fingerprint
24 on it.

25 Q. Well, was it -- like the door handle right on the door that

3879chr1

Frederick - cross

1 we have here now, did you process fingerprints off that door
2 handle?

3 A. No, sir.

4 Q. Did you take the door handle with you to the laboratory to
5 see if you could lift prints?

6 A. No, sir.

7 Q. Now there were two doors that we're dealing with, right?

8 A. Yes, sir.

9 Q. The front door had two handles on it, agreed?

10 A. Yes, sir.

11 Q. And would you agree that if somebody is entering the
12 apartment they probably have to use that handle to get in?

13 A. Usually, yes, sir.

14 Q. And did you take it upon yourself to go ahead and figure
15 that maybe that handle could have some fingerprints on it?

16 A. I didn't process it, sir.

17 Q. You didn't process it?

18 A. No, sir.

19 Q. And none of the handles were processed?

20 A. No, sir.

21 Q. And you have no recollection as you sit on the stand what
22 any one of the 67 items was but for a piece of china?

23 A. I know there was drinking containers, like beer bottles,
24 that sort of thing.

25 Q. And were any of the fingerprints that you lifted at the

3879chr1

Frederick - cross

1 police station sent to Albany for analysis?

2 A. No, sir.

3 Q. Why is that?

4 A. We take the latent fingerprints to Rockland County
5 Sheriff's Department and enter them in the SABIS there.

6 Q. Enter them where?

7 A. SABIS is the fingerprint searching, search engine.

8 Q. Do they issue a report saying this fingerprint belongs to
9 so and so or this fingerprint belongs to so and so?

10 A. They do not.

11 Q. You just give it to them and they don't report to you what
12 the results are?

13 A. No. I enter them. I entered fingerprints.

14 Q. You enter the fingerprints?

15 A. Yes, sir.

16 Q. And what is your training in fingerprint analysis?

17 A. I'm a level two latent fingerprint examiner.

18 Q. That's a lifter?

19 A. That's a lifter and a fingerprint examiner.

20 Q. How many hours in course did you have in fingerprint
21 analysis?

22 A. It's a week-long school.

23 Q. And when was that?

24 A. I believe early in 2010.

25 Q. Now, 67 possible latent prints?

3879chr1

Frederick - cross

1 A. Yes, sir.

2 Q. We know Tarrence Smith lived in that apartment, right?

3 A. Maybe, sir.

4 Q. We know Tarrence Smith was in that apartment that night,
5 don't we?

6 A. Yes, sir.

7 Q. We know Tarrence Smith has a criminal record, don't we?

8 A. Okay, sir.

9 Q. Did we get any fingerprints back for Tarrence Smith?

10 A. I don't recall.

11 Q. You know Akinto Boone was in that apartment that day?

12 A. That's what I've been told, yes, sir.

13 Q. You know he has a -- there is a fingerprint history for
14 him. Do you know that?

15 A. He does have a criminal history, yes, sir.

16 Q. Did his print come up anywhere in that apartment?

17 A. I don't recall, sir.

18 Q. Well, did you get -- you don't recall?

19 A. I don't recall.

20 Q. Well did you have -- so you did have some -- some positive
21 identifications possibly -- some positive prints; isn't that
22 right?

23 A. Yes, sir.

24 Q. Well, whose prints were they?

25 A. I don't recall.

3879chr1

Frederick - cross

1 Q. Did you put it down in writing and say: These are the
2 prints we have?

3 A. We -- once the hit comes up, we verify it through a
4 ten-print card and then it's a file that's created.

5 Q. Where's the file?

6 A. The file's back in my office.

7 Q. Did you turn it over to the government?

8 A. I don't -- I don't remember, sir.

9 Q. Incidentally, what you're saying is that you're comparing
10 whatever lifts you have to known people within Orange County;
11 is that it? Is that where you bring your latent fingerprint
12 list?

13 A. The way the system works is you enter the latent. You plot
14 the latent. It gives you back possibles and you have to
15 manually look and make the comparison.

16 Once you find one that you are satisfied that it's the
17 print, then it provides a NYSID number for that print.

18 You go back to the station. You run the NYSID number.
19 You find out who it is. Then you request a certified ten-print
20 card. And then you have to do it manually again to verify.

21 Q. And you did have some hits?

22 A. Yes, sir.

23 Q. And as far as you know you never told any law enforcement
24 official, any assistant district attorney, your boss, a
25 detective what the results of those hits were?

3879chr1

Frederick - cross

1 A. No. Everybody was told.

2 Q. Everybody was told?

3 A. Yes. My bosses knew. The district attorneys knew.

4 Q. You walked in and you told them face-to-face rather than
5 writing it down on a report?

6 A. Yes, sir.

7 Q. What if you tell it to your boss and the next day he dies
8 so nobody now knows what you told him?

9 A. Like I said, there's a file that's made.

10 Q. Where is the file?

11 A. I explained before. The file is at my office.

12 Q. Now incidentally, as I understand it, you're comparing
13 latent prints against known people whose fingerprint is on file
14 within Orange County?

15 A. New York State.

16 Q. Full-state basis?

17 A. Yes, sir.

18 Q. Now you were talking yesterday about a buccal swab --
19 excuse me one second.

20 You were talking about the buccal swab. It was
21 taken -- when was the buccal swab of my client taken?

22 A. Without either referring to the item number here or seeing
23 the box, I don't know.

24 Q. Seeing the box containing the buccal swab that my client
25 gave in 2010?

3879chr1

Frederick - cross

1 A. I'm sorry. What was the question?

2 Q. In preparation for trial, have you seen the buccal swab
3 that contained my client's swab that was given in 2010?

4 A. I'm assuming so, yes.

5 Q. Assuming so. It should have been kept, right?

6 A. Yeah.

7 Q. Any reason -- withdrawn.

8 So you don't know the day it was taken as you sit on
9 the stand?

10 A. No, sir.

11 Q. Were you present when it was taken?

12 A. I don't believe so. And I don't know which defendant is
13 your client, sir.

14 Q. Well, were you present -- prior to the murder in
15 December 15 of 2010, were you present for the swabbing of any
16 defendant in this case? Any defendant in this case?

17 A. I don't believe so.

18 Q. You were given a swab with regard to Raymond Christian, is
19 that not correct, by a member of the -- by somebody?

20 A. I believe so.

21 Q. And do you know who that person is?

22 A. I do not.

23 Q. It was a member of the City of Newburgh police department?

24 A. I would assume so but sometimes we get them from members of
25 the district attorney's office as well.

3879chr1

Frederick - cross

1 Q. When you received this swab, do you have an idea about what
2 date it was?

3 A. It would -- like I said, if I had an item number I could
4 look it up. If it's involving this case. If not, if we have
5 the box, I could look at the box.

6 Q. Well, let's get -- assume -- just assume now, that a swab
7 was taken September of 2009, a buccal swab, voluntarily given
8 by the individual.

9 A. Okay.

10 Q. What should happen with that swab as far as the rules and
11 regulations of the Newburgh police department?

12 A. It should be cataloged and entered into evidence.

13 Q. And when you say entered as evidence, put into the chain of
14 custody that we were talking about?

15 A. That is correct.

16 Q. So, assume again. If a swab is taken by Raymond Christian
17 on October 7, 2010 the appropriate and proper procedure would
18 be to place it into the chain of custody that has been
19 established in the property clerk's office of the City of
20 Newburgh police department?

21 A. Yes, sir.

22 Q. Can you think of any reason why it wouldn't be put in the
23 same day it was taken?

24 A. For myself, speaking for myself?

25 Q. Speaking for yourself, yes?

3879chr1

Frederick - cross

1 A. Unless something major happened where we had to leave the
2 station in an emergency situation, as far as myself goes, no.

3 Q. Now what -- assume again that a swab was taken October 7,
4 2010 and it's not put into the system, the chain of custody
5 system, and it's just left laying around somewhere, what
6 becomes of the integrity of that item?

7 A. Somebody is going to have to do a lot of explaining.

8 Q. A lot of explaining.

9 A. I would say so.

10 Q. And would it not be fair to say that that item is subject
11 to contamination?

12 A. If the box is sealed --

13 Q. Maybe not. What if it's left in a hot environment locked
14 away somewhere, put in a drawer and not touched for
15 two-and-a-half months, would there be degradation?

16 A. I -- from what I've been told, yes. I'm not a scientist
17 but I would agree with that statement.

18 Q. And it would be certainly subject to tampering by somebody
19 who has a motive to tamper with it?

20 A. If somebody like that existed, yes.

21 Q. But can you quickly check through 3524-26 and see if a
22 buccal swab taken on October 7, 2010 of Raymond Kristen is in
23 the -- if it refreshes your recollection whether or not a
24 buccal swab taken of Raymond Christian is in the chain of
25 custody.

3879chr1

Frederick - cross

1 MR. BAUER: Your Honor, the government is willing to
2 stipulate that there is no record of this October 7 swab in
3 this document before Detective Frederick.

4 THE COURT: Okay.

5 MR. GREENFIELD: It's been agreed by the parties that
6 it's not in there.

7 BY MR. GREENFIELD:

8 Q. So might it have been entered into the system under another
9 number?

10 A. Yes, sir.

11 Q. Have you been asked to check the system to see if it was
12 entered under another number?

13 A. I don't remember.

14 Q. Now incidentally, is your system, the fingerprint system,
15 is that hooked into the FBI's fingerprint system?

16 A. The system in Rockland County, sir? From my understanding
17 is the administrator of the SABIS unit at the end of the month
18 all the ULs, unidentified latents, are then entered into the
19 FBI system.

20 THE COURT: I'm sorry. You mentioned the name of this
21 system at Rockland County. Could you spell it.

22 THE WITNESS: It's S-A-B-I-S.

23 THE COURT: S-A-B-I-S?

24 THE WITNESS: Yes.

25 THE COURT: Thank you.

3879chr1

Frederick - cross

1 Q. Do you remember how many fingerprint hits there were?

2 A. I believe there was three. And I think they all came back
3 to the same party.

4 Q. Now, when is it that you received this swab, from whoever
5 it is that gave it to you?

6 A. Without having chain of custody report or the box --
7 actually the chain of custody report would tell me. Without
8 having the chain of custody report for that item, I have no
9 idea.

10 Q. Well clearly -- withdrawn.

11 If it was in any chain of custody you would have had
12 to retrieve it yourself, wouldn't you, since you were the
13 custodian of the property?

14 A. One of us would have.

15 Q. So, am I correct in assuming if it was any case, chain of
16 custody, somebody would have told you go to case number 1234
17 and go get us a buccal swab that was put into the system back
18 on October 7, 2010? Wouldn't that be a fair statement?

19 A. Yes, sir.

20 Q. Do you recall that happening?

21 A. I do not.

22 Q. So you're saying it didn't happen?

23 A. I'm saying I don't remember.

24 Q. So would it be fair to say from the date the swab was made
25 until you received it in the property clerk's office you have

3879chr1

Frederick - cross

1 no idea what was done with that swab, who dealt with it or who
2 in any way may have touched it?

3 A. Correct.

4 Q. Approximately what day after October 15 -- withdrawn.

5 What day after December 15, 2010 did you receive the
6 swab?

7 A. I have no idea.

8 Q. Well, we know that the murder took place on December 15.
9 We know, don't we, that any items that you seized during the
10 course of your crime scene functions and property clerk
11 functions, everything was sent to Albany on December 21, 2010;
12 am I right?

13 A. Yes, sir.

14 Q. So that's a six-day window we're looking at?

15 A. Okay.

16 Q. Do you remember when it is that you, looking at that
17 six-day window now, when it is that you received the buccal
18 swab of Raymond Christian?

19 A. No, sir.

20 Q. When you received it, after you received it, did you enter
21 it into your property clerk's chain of custody for the murder
22 of Mr. Henry?

23 A. No, sir. This is the same one we just said it's not in
24 here?

25 Q. The one that's sitting in front of you, yes.

3879chr1

Frederick - cross

1 A. We just agreed that -- we all stipulated it's not in here.

2 Q. So you didn't put it in?

3 A. No. Because it was taken for another case, it's got to go
4 under that case number.

5 Q. Now, did you send it to Albany at a certain point?

6 A. I believe so.

7 Q. You have no recollection, again, if you personally did it?

8 A. I don't.

9 Q. Did there come a time on December or in December,
10 particularly December 21 of 2010, that a representative of the
11 New York State Police laboratory, a fell know named Irv Klein
12 came to pick up all the evidence to bring it up to the lab?

13 A. No, sir.

14 Irv Klein?

15 Q. Or Mr. Klein.

16 A. Is it Investigator Klein?

17 Q. Investigator Klein?

18 A. I'm asking? I don't -- sometimes -- sometimes
19 investigators from the state police will transport things to
20 Albany for us in major cases. But depending on what paperwork
21 you have, I know if we submit DNA and ballistic evidence to the
22 lab at Stewart Airport they have people that transport every
23 Thursday from there to Albany.

24 Q. Well, by referring to 3524-26 could you quickly look at
25 that and see if your recollection is refreshed as to who picked

3879chr1

Frederick - cross

1 up the property from your office and transported it to Albany.

2 A. Investigator Klein, yes, sir, New York State Police.

3 Q. And he took all the property from your office that you had
4 to send to Albany and he brought it up there?

5 A. Yes, sir.

6 Q. Correct? And that occurred on December 21, 2010 sometime
7 in the morning hours?

8 A. Yes, sir.

9 Q. Now, with regard to the ski mask that you recovered at 54
10 Chambers Street -- may I have that, actually?

11 MR. GREENFIELD: May I approach the witness, judge?

12 THE COURT: You may.

13 Q. Could you open this up, please. And remove the mask and
14 the other contents.

15 MR. GREENFIELD: Your Honor, may I stand near the
16 witness while we're discussing this?

17 THE COURT: Sure. Just keep your voice up.

18 MR. GREENFIELD: I will.

19 May I see the bag first?

20 THE WITNESS: The paper bag or plastic bag?

21 MR. GREENFIELD: Yes. The paper bag.

22 THE WITNESS: There you go, sir.

23 BY MR. GREENFIELD:

24 Q. Now, looking -- this is in evidence. Looking at -- this
25 bag contains a written record of the chain of custody, correct?

3879chr1

Frederick - cross

1 A. Yes.

2 Q. This bag shows that on December 15, 2010 you placed it in a
3 bag at 14:38 hours?

4 A. Yes, sir.

5 Q. Can I have it back?

6 A. Here you go.

7 Q. And this bag shows that on December 15 you sealed it?

8 A. Correct.

9 Q. And this bag also shows that on December 21, 2010 RLK, most
10 probably RL, not knowing what that means, but K meaning Klein
11 picked it up from you and brought it to Albany?

12 A. Quite possibly.

13 Q. Well do you know anybody who handled that bag besides
14 yourself on December 21, 2010?

15 A. No, sir.

16 Q. Didn't you say before you gave it to Klein?

17 A. I'm sorry.

18 Q. Didn't you say before you gave it to Inspector Klein?

19 A. Oh, yes, sir. Sorry. I misunderstood.

20 Q. And there's a seal opened on the top of the bag. Is that a
21 New York State Police seal?

22 A. Yes, sir.

23 Q. So when it got to the laboratory that's what that
24 indicates, correct?

25 A. Yes, sir.

3879chr1

Frederick - cross

1 Q. What date was it opened in the laboratory?

2 A. Well, it's dated on 12-28. So I don't know if that's the
3 open date or the reseal date.

4 Q. But clearly the only date from the laboratory on that bag
5 is December 28, 2010? Other than Klein taking it into
6 possession?

7 A. Yes, sir.

8 Q. Now, could you open the mask up.

9 Did you ever open that -- this envelope during the
10 time from December 15, 2010 to December 21, 2010 and remove
11 that mask and take swabs from that mask?

12 A. I do not believe so.

13 Q. You do not believe so or you didn't?

14 A. I did not.

15 Q. You did not?

16 A. No.

17 Q. Did you ever tell the grand jury that at some point after
18 December 15 and before December 21, 2010 you removed all the
19 items of clothing from the bags and you photographed them and
20 took blood stain swabs from them?

21 A. If it's in the grand jury record, then yes.

22 Q. Well would you like to read your grand jury testimony
23 for -- would you like to read your grand jury testimony and see
24 if it refreshes your recollection?

25 A. Sure.

3879chr1

Frederick - cross

1 Q. I'm going to show you what's been marked as grand jury --
2 withdrawn -- as 3524-17. And ask you to direct your attention
3 to page 28 through page 32.

4 A. Okay. Thank you. (Pause)

5 Yes, sir.

6 Q. Is your recollection refreshed now?

7 A. Yes, it is. Thank you.

8 Q. What occurred?

9 A. (No response).

10 Q. What happened when you opened the bag? Did you open the
11 bag containing the ski mask?

12 A. I did not.

13 Q. Who did, if anybody?

14 A. The lab opened this bag.

15 Q. The lab opened the bag?

16 A. Yes, sir.

17 Q. That would be on December 28.

18 A. I'm not sure. Like I said, I don't know if that's the
19 sealed date or an open date.

20 Q. Let me ask you this: Were any swabs sent with regard to
21 that mask from the Orange County property clerk's office to
22 Albany brought up there by Inspector Klein?

23 A. No, sir.

24 Q. Now, Inspector Klein indicates that he received five swabs
25 from that mask. Would he be correct or incorrect?

3879chr1

Frederick - cross

1 A. Five swabs from this mask from my office?

2 Q. Yes.

3 A. Incorrect, sir.

4 Q. Say that again.

5 A. Incorrect, sir. I didn't swab this mask. I swabbed some
6 clothing but not this mask.

7 Q. So the mask was not swabbed by you?

8 A. No, sir.

9 Q. Was it swabbed by anybody else?

10 A. I'm assuming at the lab somebody did it.

11 Q. You're assuming?

12 A. Yes. But I don't -- I can't say for certain. I wasn't
13 there with them.

14 Q. Are you familiar with the procedures at the lab and how
15 they work up there?

16 A. I'm going to say no.

17 Q. Would it be fair to say that they have a similar system in
18 the laboratory -- in the New York State Police lab to your
19 chain of custody -- to your chain of custody?

20 A. It's the exact same system, sir.

21 Q. It's the same system?

22 A. That's why we bought it.

23 Q. So, when whatever you gave to Inspector Klein gets up there
24 to the laboratory, it goes into the chain of custody, correct?

25 A. Correct.

3879chr1

Frederick - cross

1 Q. So, for instance, the ski mask went into the chain of
2 custody on whatever time, whatever moment Klein got to Albany
3 and gave it to the property clerk, correct?

4 A. Yes, sir.

5 Q. And if you didn't create swabs, no swab should have been
6 turned over to the property clerk in the New York State Police
7 lab because there were no swabs, correct?

8 A. Correct.

9 Q. Dealing with the ski mask?

10 A. Correct.

11 Q. And if there were, then we have a mystery, right?

12 A. Yes, we do.

13 Q. Now what formal education -- do you have any formal
14 education in the taking of swabs for DNA purposes -- for
15 laboratory DNA purposes?

16 A. Just the crime scene schools I've been to. That's it.
17 Just the crime scene schools I've been to, sir.

18 Q. And approximately how many hours of classes did you take
19 involving DNA training for performance of laboratory-related
20 functions?

21 A. As far as what the lab does, no training.

22 As far as the actual collection aspect of it, yes.

23 Q. But you did do swabbing of some of the evidence in this
24 case, according to your testimony; isn't that correct?

25 A. Yes, sir.

3879chr1

Frederick - cross

1 Q. You did open up bags of evidence in your offices and
2 swabbed some of those pieces of evidence for crime scene -- for
3 laboratory analysis purposes, correct?

4 A. Correct.

5 Q. What items are those?

6 A. It was clothing items, sir. I don't recall --

7 Q. You don't recall that?

8 A. I could refresh. I believe --

9 Q. Please refresh.

10 A. They are listed in the grand jury testimony.

11 Q. Refresh.

12 A. They were our City of Newburgh items Nos. 60, 61, and I
13 believe it says 63, which are: City of Newburgh item No. 60 is
14 a gray sweatshirt; City of Newburgh item No. 61 is a black
15 sweatshirt; and City of Newburgh item No. 63 are bluejeans.

16 Q. Now, yesterday you said when you opened the bags that were
17 containing these clothing items we had determined to streamline
18 them. You said "we." Who are the we that made that
19 determination?

20 A. It would have been -- that decision would have been made in
21 cooperation with the district attorney's office and my
22 superiors.

23 Q. And the lead detective in the case?

24 A. More than likely.

25 Q. And the lead detective's name is?

3879chr1

Frederick - cross

1 A. I believe it's Joe Cortez. Yes, sir. Joseph Cortez.

2 Q. But as you sit on the stand today you have no recollection
3 of removing that mask and making swabs prior to it being turned
4 over to Investigator Klein, swabs from that mask?

5 A. Correct.

6 Q. Would you go through the process -- not go through the
7 process. Explain the process of how you removed these items
8 that you did remove and tested or removed swabs from.

9 A. Yes, sir.

10 Q. Do you understand my question?

11 A. I do. I believe so. I'll start and if I'm not answering
12 it properly I'm sure you'll let me know.

13 Basically what we'll do is we'll get a fresh piece of
14 butcher paper, like I explained yesterday, we put it on the
15 table. The bag is opened. The item is laid out onto the bag.
16 We will identify an area that would be a stain. We will then
17 swab it, using two sterile -- basically really large Q-tips and
18 you will moisten it up with some sterile water by -- you drop
19 the water from above onto it. You don't ever touch the Q-tips.
20 You deposit it from above.

21 Then you will, in a circular motion or a rolling
22 motion put the moistened Q-tips into the stain. Most of the
23 time you'll see some kind of color transfer so you know you're
24 actually picking up some kind of -- biological evidence,
25 especially when you're dealing with blood, you'll get a reddish

3879chr1

Frederick - cross

1 or brownish coloring onto the Q-tips.

2 It's then placed into a little box, a little box which
3 contains -- we'll write date, time, person who is doing it, and
4 usually we'll put some type of item number on that box. That
5 box is then placed into an envelope and sealed.

6 The stain on the shirt is then identified usually with
7 magic marker. We'll go around it. So if we have to go back
8 later on and say where we got it exactly from we can now say it
9 came from within this magic marker square or circle.

10 The swab is then eventually placed into evidence and
11 given a -- an item number. Sometimes each swab box themselves
12 will get an item number. Sometimes if we're taking multiple
13 swabs it will be item No. 37, twelve swabs.

14 Q. If I could interrupt you now.

15 A. Yes, sir.

16 Q. Where was this performed? Is there a room within police
17 headquarters that has a sterile laboratory environment?

18 A. No, sir.

19 Q. Is there a room within the police headquarters for the
20 taking of laboratory quality samples from items seized in
21 evidence -- seized during the course of investigation?

22 A. You said laboratory quality?

23 Q. Yes.

24 A. We just work in our office. It's not a sterile
25 environment.

3879chr1

Frederick - cross

1 Q. When you say in your office, you mean your personal office
2 or in the property clerk's office in general?

3 A. My personal -- it's all one and the same.

4 Q. Well, you use your regular desk?

5 A. No. We have several work tables within the office.

6 Q. Okay. And you keep saying we, we, we. Give me names. Not
7 we-s but names.

8 A. Yes, sir. Sergeant Vancura, Detective Burns and myself all
9 at that time shared the same office area and that's where we
10 work from.

11 Q. Repeat those names again?

12 A. Detective Kevin Burns, Sergeant Peter Vancura V-A-N-C-U-R-A
13 all shared the same office, large office. We all worked in it.
14 And it has the stations that we work -- not just our desk but
15 also tables we work from, we do work from.

16 Q. That's your recollection as to where this procedure took
17 place that you've just described?

18 A. Yes, sir.

19 Q. How long did it take?

20 A. Probably just several minutes for each piece of clothing.

21 Q. Well did you gather any -- put it on the table, how did
22 that go?

23 A. I'm sorry. Did I gather?

24 Q. Withdrawn.

25 What equipment did you use to make your cuttings?

3879chr1

Frederick - cross

1 A. I didn't do any cuttings, sir.

2 Q. Didn't do any cutting at all?

3 A. No, sir.

4 Q. So all you used was swabs?

5 A. Correct.

6 Q. And did you have them laid out in front of you?

7 A. (No response).

8 Q. How many swabs -- are they individual kits is what I'm
9 saying.

10 A. Basically the Q-tips come in a big box. They are
11 individually packaged, two Q-tips per package, I think they
12 come a hundred to a box. The water is in a one-ounce squeeze
13 bottle. And the cardboard boxes come I think 50 to a package.

14 Q. I think you also -- withdrawn.

15 Did you photograph the items which you did these
16 swabbings on?

17 A. Yes, sir.

18 Q. As you sit on the stand now, do you recollect what day this
19 happened.

20 A. Can I refresh?

21 Q. Please.

22 A. (No response).

23 Q. What are you using to refresh your recollection?

24 A. The chain of custody report, sir.

25 It looks like it's February 1, 2011 around 1500 hours.

3879chr1

Frederick - cross

1 Q. So this didn't occur prior -- withdrawn. This occurred
2 after a good portion of the evidence went up to the lab on
3 December 21, 2010?

4 A. Yes, sir.

5 Q. So, again, putting aside this incident where apparently
6 something happened between December 21, 2010 and -- what was
7 that February date you just mentioned in 2011?

8 A. February 1, yes, sir.

9 Q. Go back to that period of time between December 15, 2010
10 and December 21, 2010, and I asked you the same question. Did
11 you or anybody in your labor your office remove that ski mask
12 and take swabs off of that ski mask?

13 MR. BAUER: Objection. Asked and answered a number of
14 times, your Honor.

15 THE COURT: Sustained.

16 MR. GREENFIELD: Different point in time, judge.

17 THE COURT: What's the point of time?

18 MR. GREENFIELD: He's referring -- he says in the
19 grand jury to other items that occurred at a different point of
20 time. That's why I was referring back to this last question.

21 THE COURT: You can answer the question.

22 THE WITNESS: No swabs were ever taken from this mask
23 by a member of my department.

24 Q. By you?

25 A. By me.

3879chr1

Frederick - cross

1 Q. By you?

2 A. By me.

3 Q. Now would you say the procedure you used for opening up the
4 bags and swabbing them for laboratory purposes was not the
5 usual procedure?

6 A. We normally -- we normally don't do it. We'll normally
7 send it to the lab to be done. But sometimes -- not always --
8 sometimes we will be asked to do things like that.

9 Q. The lab function to make the swabs and to make the
10 cuttings; isn't that correct?

11 A. Yeah, one of the functions up there, yes, sir.

12 Q. And in your career how many times have you broken the chain
13 of custody and opened a bag in the laboratory and taken
14 swabbings?

15 A. A couple dozen.

16 Q. A couple thousand?

17 A. Dozen.

18 Q. Dozen. Now, clearly, if the bag should have been opened
19 during December 15 through December 21 an indication should
20 have been put on the bag that it had been opened, correct?

21 A. Correct.

22 Q. Just check one second, your Honor.

23 THE COURT: Yes.

24 (Pause)

25 MR. GREENFIELD: Nothing further, judge.

3879chr1

Frederick - cross

1 THE COURT: Mr. Goltzer, you weren't going to
2 cross-examination, correct?

3 MR. GOLTZER: No, thank you, judge.

4 THE COURT: Any redirect?

5 MR. BAUER: Yes, your Honor. Thank you.

6 REDIRECT EXAMINATION

7 BY MR. BAUER:

8 Q. Mr. Greenfield was just asking you a number of questions
9 about your testimony before the grand jury. Do you recall
10 those questions?

11 A. Yes, sir.

12 Q. And he showed you your grand jury testimony, correct?

13 A. Correct.

14 Q. That's 3524-17. It's still before you.

15 A. Yes, sir.

16 Q. And he referred you to page 32 where you testified about
17 taking certain items of clothing out of the bags and swabbing
18 them, correct?

19 A. Correct.

20 Q. And he asked you a number of questions about swabbing --
21 swabbing those articles of clothing, right?

22 A. Correct.

23 Q. I think he even used the term breaking chain of custody.
24 Do you remember those questions?

25 A. Yes, sir.

3879chr1

Frederick - redirect

1 Q. On page 32, I think you made it clear that the articles of
2 clothing that you testified about before the grand jury, that
3 you pulled out of the bags and swabbed, those were the articles
4 of clothing that you had gotten from the hospital, right?

5 A. Yes, sir.

6 Q. I'm going to ask you to refer to page 30, just two pages
7 before in your transcript.

8 A. Yes, sir.

9 Q. And now on page 30 does that refresh your recollection
10 about your -- about the testimony that you provided with regard
11 to the mask as well as a white glove?

12 A. Yes, sir.

13 Q. And before the grand jury what did you say about how you
14 handled the mask?

15 A. It basically I describe wearing rubber gloves, placing it
16 in a bag, sealing the bag, and then having the bag sent to
17 Albany.

18 Q. Specifically didn't you say that -- that you collected the
19 rubber gloves, you placed it into a paper bag, sealed it, and
20 then it is not opened until it's sent out?

21 A. Yes.

22 Q. So when Mr. Greenfield pointed you to the testimony about
23 you opening bags, it had nothing to do with the mask, correct?

24 A. Correct.

25 MR. BUCHWALD: Objection, your Honor. I think the

3879chr1

Frederick - redirect

1 reference was to page 28 to 32 when Mr. Greenfield asked the
2 questions.

3 THE COURT: Overruled.

4 Q. Again, sticking with the mask, Mr. Greenfield asked you a
5 number of questions about who swabbed the mask. Do you recall
6 those questions?

7 A. Yes, sir.

8 Q. I think you answered a number of times that it was not you,
9 correct?

10 A. Correct.

11 Q. Do you know -- do you know if your office received the
12 swabs that were taken from that mask at any point?

13 A. Yes, sir.

14 Q. You do. And would that information be in the chain of
15 custody report?

16 A. It would, sir.

17 Q. I'd like you to -- to refer you to 3524-26 that chain of
18 custody report and I can shortcut this by referring you to page
19 71. Items 3(a) through 3(e).

20 A. Yes, sir.

21 Q. Is your recollection refreshed as to items 3(a) through
22 3(e)?

23 A. Yes, sir.

24 Q. What are items 3(a) through 3(e)?

25 A. Swabs that were -- swabs that we got back from the lab that

3879chr1

Frederick - redirect

1 are listed that they came from the mask.

2 Q. And what date did your office receive those swabs?

3 A. February 22.

4 Q. February 22?

5 A. Sorry. March -- 3-22.

6 Q. March 22 of what year?

7 A. 2011.

8 Q. So the first time those swabs entered the Newburgh PD
9 according to your chain of custody report was March 22, 2011?

10 A. Correct.

11 Q. Mr. Greenfield was also asking you about a buccal swabs
12 from October 7, 2010 of Raymond Christian. Do you remember
13 those questions?

14 A. Yes, sir.

15 Q. Did you work on that case -- a case involving an October 7,
16 2010 buccal swab of Raymond Christian?

17 A. I don't remember to be quite honest with you.

18 Q. Sitting here today do you remember anything about that
19 case?

20 A. No, sir.

21 Q. Do you know if it was incident to an arrest or some other
22 reason that the buccal swab was taken?

23 A. I have no idea, sir.

24 Q. You just don't know?

25 A. At all.

3879chr1

Frederick - redirect

1 Q. Mr. Greenfield asked you a couple of questions about
2 fingerprint hits in this case. Do you remember those
3 questions?

4 A. Yes, sir.

5 Q. He's asking you where was that file, the file that you
6 wrote down what the fingerprint hits were. Do you remember
7 those questions?

8 A. Yes, sir.

9 Q. Now, during the course -- during the last three plus years
10 you've interacted with a number of lawyers and case agents who
11 are involved in this case, correct?

12 A. Yes, sir.

13 Q. Have you interacted with an ADA?

14 A. Yes, sir.

15 Q. Have you interacted with me and Mr. Nawaday?

16 A. Yes, sir.

17 Q. Have you interacted with FBI agents?

18 A. Yes, sir.

19 Q. Have you interacted with Newburgh PD detectives?

20 A. Yes, sir.

21 Q. During the course of the last three-and-a-half years have
22 one of them, even if you don't remember which one, asked you
23 for your file?

24 A. No, sir.

25 Q. Nobody has asked you for your file for the fingerprints?

3879chr1

Frederick - redirect

1 A. I don't know if anybody -- I just -- we never are brought
2 to talk to somebody about those. I just --

3 MR. GREENFIELD: Your Honor, may we have a sidebar?

4 THE WITNESS: -- bring it.

5 THE COURT: Okay.

6 (Continued on next page)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

3879chr1

Frederick - redirect

1 (At the sidebar)

2 MR. GREENFIELD: Judge we were going to go to trial,
3 it was April, I think it was, when I had told you in your other
4 courtroom that we didn't receive any reports with regard to
5 fingerprint analysis done by this witness. That's the primary
6 reason we adjourned the trial from April until today, to this
7 date. And it sounds like they're now going to come forward
8 with some reports that I have never received.

9 The only thing I received when we got to my question
10 back then about the fact that we didn't have any latent
11 fingerprint results was that they came back negative. Or there
12 were no reports. There is nothing with regard to the
13 fingerprints. And that's what I was told. A letter was
14 written in that regard I think by Mr. Nawaday.

15 MR. BAUER: The point of this question is I don't want
16 it to be -- want to make it clear that we asked for the file
17 and that he provided information either via file or verbally.
18 So we weren't withholding information from defense or from the
19 jury. So that's the whole reason I'm asking these questions.
20 I don't want the jury to be left with the impression that we've
21 been holding back information.

22 MR. GREENFIELD: I don't want to be saying that in
23 front of a jury.

24 MR. BAUER: It's not about the report. It's about the
25 information.

3879chr1

Frederick - redirect

1 THE COURT: I'm trying to figure out what's happened
2 here. Is there a report that was prepared by this witness?

3 MR. BAUER: He has notes.

4 THE COURT: So he has notes.

5 MR. BAUER: He has notes in a file.

6 THE COURT: And were they requested of him?

7 MR. BAUER: They were.

8 THE COURT: Did he turn them over?

9 MR. BAUER: I believe he -- I believe he provided the
10 information orally which we then communicated to them.

11 THE COURT: To them being who? Being the defense
12 lawyers?

13 MR. BAUER: Defense, yes.

14 THE COURT: When did that happen?

15 MR. GREENFIELD: I received nothing, judge, other than
16 one sentence in a -- basically there was no results.

17 MR. BAUER: Right.

18 MR. GREENFIELD: That doesn't sound like -- he said
19 there were results.

20 MR. BAUER: Why don't I leave this line of questioning
21 for now and I'll just move on and we'll talk to --

22 THE COURT: Are you intending to rely on any report or
23 any conclusions --

24 MR. BAUER: No.

25 THE COURT: -- conclusions that Mr. Frederick obtained

3879chr1

Frederick - redirect

1 from the fingerprints?

2 MR. BAUER: No.

3 THE COURT: Okay.

4 MR. BAUER: I'll move on.

5 MR. GREENFIELD: We move to strike his testimony.

6 MR. GOLTZER: The problem is that there's the
7 potential of the violation of the witness advocacy rule because
8 the government is now placing its own credibility before the
9 jury. No one is contesting the government's good faith. The
10 problem is this witness isn't keeping proper records.

11 MR. BAUER: Do you want to strike the last couple
12 questions?

13 MR. GOLTZER: I think that's the application, is to
14 strike the last questions and answers.

15 MR. BAUER: That's fine. Let's deal with this later.
16 That's fine.

17 THE COURT: Okay. How many questions was that? The
18 last two?

19 MR. BAUER: I think it was -- I think it was one
20 question, one long question and one follow-up.

21 MR. NAWADAY: David, which question did you want
22 stricken? It was just this last one?

23 MR. GREENFIELD: Just having a conference with
24 cocounsel.

25 (Pause)

3879chr1

Frederick - redirect

1 THE COURT: The last two.

2 MR. GREENFIELD: Just leave it as it.

3 THE COURT: Okay.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E87nchr2

Frederick - redirect

1 (In open court)

2 THE COURT: Mr. Bauer.

3 BY MR. BAUER:

4 Q. I am going to move on, Detective Frederick. Just a couple
5 of quick things.

6 Mr. Greenfield asked you about whether you swabbed
7 this door, this big door, Government Exhibit 40, for
8 fingerprints. Do you remember that question?

9 A. If I dusted it for fingerprints?

10 Q. Yes.

11 A. Yes.

12 Q. I believe you had said that you did not?

13 A. Correct.

14 Q. Why is that? Why wouldn't you dust something like a door
15 handle for fingerprints?

16 A. We had multiple members of the agency go through that door,
17 go through the front door when they had to do a sweep of the
18 apartment originally.

19 Q. So what does that mean for you in terms of fingerprint
20 collection?

21 A. Basically it's been compromised already.

22 Q. OK. Yesterday Mr. Buchwald asked you questions,
23 hypothetical questions about whether somebody could shoot from
24 the inside of 54 Chambers through the front door if both the
25 interior door and the exterior door were open. Do you remember

E87nchr2

Frederick - redirect

1 those questions?

2 A. Yes, sir.

3 Q. Then he asked you some follow-up questions about whether --
4 he asked you about the holes in this door, Government Exhibit
5 40, and then he asked you questions about the front door. Do
6 you remember those questions?

7 A. Yes, sir.

8 MR. BAUER: Ms. McInerney if we could pull up
9 Government Exhibit 92B again.

10 Q. I believe yesterday you testified this was a photograph
11 that you took in the early morning hours of December 15, 2010.

12 Do you remember that?

13 A. Yes, sir.

14 Q. What is it a picture of?

15 A. The front door of 54 Chambers.

16 Q. Are there any bullet holes through that front door?

17 A. No, sir.

18 Q. Mr. Buchwald yesterday asked you a number of questions
19 about the number of shell casings and the number of projectiles
20 that were collected at the crime scene. Do you remember those
21 questions?

22 A. Yes, sir.

23 Q. Then he referred briefly to the fragments that you had
24 collected. Do you remember those questions?

25 A. Yes, sir.

E87nchr2

Frederick - redirect

1 Q. And in particular, you testified yesterday about fragments
2 Government Exhibits 6, 9, 26 and 29. Do you remember looking
3 through those yesterday?

4 A. Yes, sir.

5 Q. Now, those fragments, do you know one way or the other
6 whether they were part of the projectiles that you collected?

7 A. No, sir.

8 Q. Meaning is it possible that those fragments came from
9 different bullets and not the same bullets that you collected?

10 A. Anything is possible, sir, yes, sir.

11 MR. GOLTZER: Object to the speculation. Move to
12 strike.

13 THE COURT: Sustained.

14 Q. Do you know if those fragments definitively belonged to the
15 bullets that you collected?

16 A. I do not.

17 Q. Now, yesterday you testified about nine-millimeter guns and
18 .380s and your personal experience with those types of guns.

19 Do you remember those questions?

20 A. Yes, sir.

21 Q. In particular, you had said that, based on your experience
22 that you cannot fire a nine-millimeter bullet from a .38 gun,
23 or I believe that's what you had said.

24 A. I believe I think I said I don't know if you can or not.

25 Q. That's my question.

E87nchr2

Frederick - redirect

1 A. OK.

2 Q. Do you know one way or the other if you can fire a
3 nine-millimeter round from a .38-caliber weapon?

4 A. I do now. I tried to chamber a nine-millimeter in one of
5 my .38s last night, and it won't fit in the cylinder, because I
6 was curious about what the man said.

7 Q. You did that last night?

8 A. Yes, sir.

9 Q. Do you know one way or the other if there are other ways
10 for a nine-millimeter bullets to fit in a .38 gun?

11 A. I do not.

12 Q. Do you know in particular if you were to shave down or
13 otherwise try to make the nine-millimeter fit into a .38
14 whether it would fit?

15 MR. BUCHWALD: Objection as to speculation.

16 MR. BAUER: I'm asking if he knows.

17 MR. BUCHWALD: He says he didn't know.

18 THE COURT: Overruled.

19 Q. Do you know if it's possible to shave down a
20 nine-millimeter bullet to fit into a .38-caliber weapon?

21 A. I do not know.

22 Q. Finally, Detective Frederick, Mr. Greenfield kept asking
23 you a number of questions about things that you tested, did you
24 test this? Did you test that? Do you remember those
25 questions?

E87nchr2

Frederick - redirect

1 A. Yes, sir.

2 Q. Yesterday, you testified that the primary purpose of your
3 job when you go to a crime scene is to collect evidence,
4 correct?

5 A. Yes, sir.

6 Q. Do you test evidence?

7 A. Not normally.

8 Q. What is your normal job?

9 A. Normal job is we document, collect, catalog, and either
10 store or send it somewhere.

11 MR. BAUER: Judge, just one moment.

12 Q. I'm sorry. Just to be clear, collecting, does that include
13 a buccal swab? Would you consider that a collection or a test?

14 A. Collection.

15 Q. What about the DNA swabs that you took from those
16 sweatshirts?

17 A. Collection.

18 MR. BAUER: No further questions, your Honor.

19 THE COURT: Mr. Buchwald, any recross?

20 MR. GOLTZER: I have no recross, your Honor.

21 MR. BUCHWALD: I have no recross.

22 MR. GREENFIELD: I have a few questions. I can do it
23 from here, Judge.

24 THE COURT: I can't hear you from there.

25 MR. GREENFIELD: I can do it from here.

E87nchr2

Frederick - redirect

1 THE COURT: As long as you speak into the microphone.
2 I can't hear you if you are not near a microphone.

3 MR. GREENFIELD: I can go over to the lectern.

4 RECROSS EXAMINATION

5 BY MR. GREENFIELD:

6 Q. Your job is evidence collection, correct?

7 A. Yes, sir.

8 Q. Your job is not preparing any evidence for examination in a
9 laboratory. That's the laboratory's function, correct?

10 A. Yes, sir.

11 Q. You were asked to look at 3524-26. I think you said on
12 page 71 it indicates that on March 22, 2011, you received some
13 swabs back from the laboratory indicating they were 3A through
14 3E, am I right?

15 A. I'm just making sure I have all the numbers correct here.

16 Q. Take your time.

17 A. 3A through 3E, yes. Correct.

18 Q. All right. Would that be the first entry for 3A, 3B, 3C,
19 3D, and 3E in the chain of custody with regard to this case?

20 A. Yes, sir.

21 Q. If the New York State Police lab said that your office, the
22 property clerk's office sent them 3A, 3B, 3C, 3D and 3E on
23 December 21, 2010, you couldn't account for how that happened
24 because you have no entry with regard to those swabs prior to
25 March 22, 2011?

E87nchr2

Frederick - recross

1 A. Yes, sir.

2 MR. GREENFIELD: No further questions.

3 THE COURT: Anything further?

4 MR. BAUER: No, your Honor.

5 THE COURT: Mr. Frederick, you may step down.

6 THE WITNESS: Thank you, your Honor.

7 THE COURT: Ladies and gentlemen, it's a quarter to
8 11, so let's take our morning break now. 15 minutes, please.
9 Be in the jury room no later than 11 a.m.

10 (Jury not present)

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, your Honor.

13 (Witness excused)

14 THE COURT: It will be Mr. Baynes next?

15 MR. NAWADAY: Yes, your Honor.

16 THE COURT: Anything for me?

17 MR. GOLTZER: 11 o'clock?

18 THE COURT: Sorry?

19 MR. GOLTZER: 11?

20 THE COURT: 11.

21 (Recess)

E87nchr2

Frederick - recross

1 (Jury present)

2 THE COURT: Everyone please be seated. Will the
3 government please call its next witness.

4 MR. NAWADAY: The government calls Anthony Baynes.

5 THE COURT: Mr. Baynes, please stand, face the clerk
6 and raise your right hand.

7 ANTHONY BAYNES,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 THE COURT: Mr. Baynes, please be seated. Bring your
11 seat forward, and I want you to speak directly into the
12 microphone, and I want you to speak clearly and slowly, OK,
13 when you answer the questions.

14 THE WITNESS: OK.

15 THE COURT: You need to say the word yes in response
16 to the questions, OK?

17 THE WITNESS: Yes.

18 DIRECT EXAMINATION

19 BY MR. NAWADAY:

20 Q. Do you have any nicknames?

21 A. Yes.

22 Q. What are they?

23 A. My last name, Baynes, and Little.

24 THE COURT: I am sorry. Could you bring the
25 microphone a little closer and speak directly into the

E87nchr2

Baynes - direct

1 microphone. Please repeat your answer.

2 A. Baynes and Little.

3 Q. How old are you?

4 A. 21.

5 Q. Are you married?

6 A. No.

7 Q. Do you have children?

8 A. No.

9 Q. Have you committed any crimes in your life?

10 A. Yes.

11 Q. What kind of crimes?

12 A. Robbery, holding guns, selling drugs, burglaries.

13 Q. Have you ever committed any assaults?

14 A. Yes.

15 Q. Have you ever committed any robberies during which someone
16 was shot and killed?

17 A. Yes.

18 Q. Around when did that happen?

19 A. December 15, 2010.

20 Q. Where did that robbery and shooting happen?

21 A. 54 Chambers Street, Newburgh, New York.

22 Q. What were you looking to rob?

23 A. A drug dealer of weed and money.

24 Q. Were you looking to rob drugs?

25 A. Yes.

E87nchr2

Baynes - direct

1 Q. What kind of drugs?

2 A. Any -- crack, weed, anything.

3 MR. GREENFIELD: Your Honor, can you have the witness
4 speak up.

5 THE COURT: Yes. I'm sorry, Mr. Baynes. I know it's
6 difficult. Can you bring your face closer to the microphone.

7 Q. Did you commit that robbery alone or with others?

8 A. No, no. With others, with others.

9 Q. Who?

10 A. Raymond, Gucci, Bow Wow, Quay Quay, Baby E, Bash.

11 Q. You mentioned somebody named Raymond. Did you know Raymond
12 by any other names?

13 A. Reckless, Reckless.

14 Q. You mentioned somebody named Gucci. Did you know that
15 person by any other names?

16 A. Glenn.

17 Q. You mentioned somebody named Bow Wow?

18 A. Tyrell.

19 Q. You mentioned somebody named Bash. Did you know that
20 person by another name?

21 A. Rashawn.

22 Q. You mentioned someone named Quay. Quay did you know that
23 person by another name?

24 A. Laquavious.

25 Q. You mentioned somebody named Baby E. Did you know that

E87nchr2

Baynes - direct

1 person by another name?

2 A. Eric.

3 Q. Looking around the courtroom do you recognize anyone with
4 whom you committed that robbery on December 15, 2010?

5 A. Yes.

6 Q. Who do you recognize?

7 A. Reckless, Bow Wow, and Gucci.

8 Q. Starting with Reckless. Please describe the person, what
9 that person you knew as Reckless is wearing, an article of
10 clothing that they are wearing and where they are sitting or
11 standing, where they are.

12 A. White shirt, blue and white tie, and to my right.

13 Q. Where in the courtroom do you see this person?

14 A. To my right.

15 Q. Could you describe any other persons that this person is
16 sitting next to or around?

17 A. Sitting like next to two lawyers, one with a blue tie, one
18 with a red tie in a suit.

19 MR. NAWADAY: May the record reflect that the witness
20 has identified the defendant Raymond Christian.

21 THE COURT: The record will so reflect.

22 Q. You mentioned that you see Gucci in the courtroom. Please
23 describe an article of clothing that that person is wearing and
24 where they are sitting or standing in the courtroom.

25 A. Like a gray shirt, he got glasses, he's in between two

E87nchr2

Baynes - direct

1 lawyers, one gray tie, one gray shirt -- I mean gray suit.

2 MR. NAWADAY: May the record reflect that the witness
3 has identified Glenn Thomas.

4 THE COURT: The record will so reflect.

5 Q. Please describe an article of clothing that Bow Wow is
6 wearing and where Bow Wow is in the courtroom.

7 A. He's next to two lawyers, white shirt, in between a female
8 and a man.

9 MR. NAWADAY: May the record reflect that the witness
10 has identified Tyrell Whitaker.

11 THE COURT: The record will so reflect.

12 Q. Were any guns used during this robbery?

13 A. Yes.

14 Q. Where did some of the guns come from?

15 A. Someone named L-1.

16 MR. GREENFIELD: I can't hear the witness.

17 A. L-1.

18 Q. Mr. Baynes, please keep your voice up and speak directly
19 into the microphone.

20 A. Yes.

21 Q. Did you know L-1 by any other names?

22 A. No.

23 Q. Mr. Baynes, I'm going to hand you what's been marked for
24 identification as Government Exhibits 201, 202 and 203. Please
25 take a look at those and tell me if you recognize them, and if

E87nchr2

Baynes - direct

1 you do, please tell us what they are.

2 A. Yes. Pictures of people that I committed the crimes with.

3 Q. What does Government Exhibit marked for identification 201
4 appear to be?

5 A. Raymond, Reckless.

6 Q. The person you identified as Reckless?

7 A. Yes.

8 Q. Do you know Raymond's last name?

9 A. Christian.

10 Q. And Government Exhibit 202, who does that depict?

11 A. Gucci.

12 Q. Does that appear to be a fair and accurate photograph of
13 Gucci?

14 A. Yes.

15 Q. Do you know Gucci's last name?

16 A. No, I -- no.

17 Q. Government Exhibit 203, what does that appear to be?

18 A. Bow Wow.

19 Q. Is that a fair and accurate photograph of Bow Wow?

20 A. Yes.

21 MR. NAWADAY: The government offers Government
22 Exhibits 201, 202 and 203.

23 THE COURT: Any objection?

24 MR. BUCHWALD: May I just see them.

25 No objection.

E87nchr2

Baynes - direct

1 THE COURT: 201, 202 and 203 will be received.

2 (Government's Exhibits 201, 202 and 203 received in
3 evidence)

4 Q. Mr. Baynes, I'm going to hand you what has been marked for
5 identification as Government Exhibit 201A, 201B, 202B, and
6 203B.

7 What is 201A and B?

8 A. Raymond, Christian, and Reckless.

9 Q. Are those --

10 A. Names.

11 Q. The names Raymond, Christian, and Reckless?

12 A. Yes.

13 Q. And 202B?

14 A. Gucci.

15 Q. The name Gucci?

16 A. Yes.

17 Q. And 203B?

18 A. The name Bow Wow.

19 MR. NAWADAY: The government offers Government
20 Exhibits 201A, 201B, 202B and 203B.

21 MR. GOLTZER: No objection.

22 MR. GREENFIELD: No objection.

23 MR. BUCHWALD: These are as aide-mémoires?

24 THE COURT: I'm sorry.

25 MR. BUCHWALD: Are these simply as aids to the jury?

E87nchr2

Baynes - direct

1 Otherwise they have no independent purpose.

2 THE COURT: The objection is overruled.

3 The exhibits will be received.

4 (Government's Exhibits 201A, 201B, 202B and 203B
5 received in evidence)

6 MR. NAWADAY: Your Honor, permission to put these
7 exhibits on the board and also to publish on the screens
8 Government Exhibits 201, 202 and 203.

9 THE COURT: You may.

10 Q. Mr. Baynes, I'm going to hand you what has been marked for
11 identification as Government Exhibits 205, 204, and 207.

12 Please look at these and tell me if you recognize
13 them.

14 A. Yes.

15 Q. What do they appear to be?

16 A. The people I did this crime with.

17 MR. GOLTZER: I'm sorry, Judge. I just can't hear
18 anything.

19 THE COURT: Can you repeat that Mr. Baynes.

20 THE WITNESS: The people I did the crime with in this
21 case.

22 MR. GOLTZER: Still can't hear it.

23 THE COURT: People I did this crime with in this case.

24 Q. Mr. Baynes, please keep your voice up. And speak directly
25 into the microphone.

E87nchr2

Baynes - direct

1 Government Exhibit 216, which is already in evidence.

2 Do you recognize that?

3 A. Yes.

4 Q. What is it?

5 A. Me. A picture of me.

6 Q. Government Exhibits, I'm going to hand you for
7 identification 216A and 216B, are those name plates with your
8 name and your nickname?

9 A. Yes.

10 MR. NAWADAY: The government offers Government
11 Exhibits 216A and 216B.

12 MR. GOLTZER: No objection.

13 THE COURT: Those will be received.

14 (Government's Exhibits 216A and 216B received in
15 evidence)

16 Q. Starting with what's been marked for identification as
17 Government Exhibit 204, do you see that in front of you,
18 Mr. Baynes?

19 A. Yes.

20 Q. What is that?

21 A. A picture of L-1.

22 Q. Did you know L-1 by any other names?

23 A. No.

24 Q. I'm going to hand you Government Exhibit marked for
25 identification Government Exhibit 204B. Is this just a

E87nchr2

Baynes - direct

1 nameplate that says L-1?

2 A. Yes.

3 Q. The government offers Government Exhibit 204 and 204B.

4 MR. GOLTZER: No objection.

5 THE COURT: 204 and 204B will be received.

6 (Government's Exhibits 204 and 204B received in
7 evidence)

8 Q. Moving on to what's been marked for identification as
9 Government Exhibit 205, do you recognize that?

10 A. Yes.

11 Q. What is it?

12 A. A picture of Bash.

13 Q. I am going to hand you Government Exhibit marked for
14 identification 205B. Is that just a nameplate that has the
15 name Bash?

16 A. Yes.

17 MR. NAWADAY: The government offers Government
18 Exhibits 205 and 205B.

19 MR. GOLTZER: No objection.

20 THE COURT: 205 and 205B will be received.

21 (Government's Exhibits 205 and 205B received in
22 evidence)

23 Q. Government Exhibit marked for identification 207, do you
24 recognize that?

25 A. Yes.

E87nchr2

Baynes - direct

1 Q. What is it?

2 A. A picture of Quay Quay.

3 Q. Do you know Quay Quay's full name?

4 A. Laquavious Boykin.

5 Q. I'm going to hand you what's been marked for identification
6 as Government Exhibits 207A and 207B. Are these just
7 nameplates that say the names Quay Quay and Laquavious Boykin?

8 A. Yes.

9 MR. NAWADAY: The government offers Government
10 Exhibits 207, 207A and 207B.

11 MR. GOLTZER: No objection.

12 THE COURT: 207, 207A and 207B will be received.

13 (Government's Exhibits 207, 207A and 207B received in
14 evidence)

15 Q. And Government Exhibit 208 marked for identification, what
16 is that?

17 A. A picture of Baby E.

18 THE COURT: You said Baby E?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 Q. I am going to show you Government Exhibit marked for
22 identification 208B. Is that just a nameplate with the name
23 Baby E?

24 A. Yes.

25 MR. NAWADAY: The government offers Government

E87nchr2

Baynes - direct

1 Exhibits 208 and 208B.

2 MR. GOLTZER: No objection.

3 THE COURT: 208 and 208B will be received.

4 (Government's Exhibits 208 and 208B received in
5 evidence)

6 Q. Generally, what was each person's role with the 54 Chambers
7 Street robbery?

8 A. Reckless and L-1 was like the planners. L-1 was also a
9 supplier. And everybody else was the robbers. And me and Quay
10 Quay was like robbers and lookouts.

11 Q. You said L-1 was the supplier. The supplier of what?

12 A. The guns.

13 Q. I want to turn to your background. Are you a United States
14 citizen?

15 A. Yes.

16 Q. Where were you born?

17 A. In Westchester.

18 Q. Where did you grow up?

19 A. Newburgh.

20 Q. What area of Newburgh?

21 A. On the south side, South Street, South Street.

22 Q. How far did you get in school?

23 A. To 11th grade.

24 Q. Which school did you go to when you stopped going?

25 A. NFA.

E87nchr2

Baynes - direct

1 Q. What is NFA?

2 A. Newburgh Free Academy.

3 Q. Did you go in the daytime or night?

4 A. Nighttime.

5 Q. Around when did you stop going in the day?

6 A. Like two or three months before this case happened, this
7 started.

8 Q. Around what months and year did you stop going to the day
9 program at NFA?

10 A. Like October, around October 2010.

11 Q. Why did you stop going to the day program?

12 A. I got suspended.

13 Q. For what?

14 A. For a fight.

15 Q. Who did you fight?

16 A. Somebody named -- I forgot his name.

17 Q. How old were you in October 2010?

18 A. 17.

19 Q. Where do you currently live?

20 A. MCC.

21 Q. What is the MCC?

22 A. Federal holding facility.

23 Q. That is a federal jail?

24 A. Yes.

25 Q. How long have you been at the MCC?

E87nchr2

Baynes - direct

1 A. Two years, around two years.

2 Q. Where were you before you were brought to the MCC?

3 A. At Orange County facility.

4 Q. At a state prison?

5 A. Yes.

6 Q. Did there come a time when you spoke with Newburgh
7 detectives about the robbery and shooting at 54 Chambers?

8 A. Yes.

9 Q. Around when was the first time you spoke with them?

10 A. The night of December 15.

11 Q. About how soon after the robbery and shooting was that?

12 A. Right after. It was like probably an hour.

13 Q. Where were you when you spoke with them?

14 A. The hospital in Newburgh.

15 Q. Which hospital?

16 A. St. Luke's.

17 Q. In Newburgh?

18 A. Yes.

19 Q. What did you tell them?

20 A. That I walked inside of the robbery and ended up being
21 robbed and stabbed, too.

22 MR. GOLTZER: We didn't hear, Judge.

23 A. I walked inside of a robbery and ended up being stabbed and
24 robbed, too.

25 Q. Did you tell them that you participated in --

E87nchr2

Baynes - direct

1 MR. BUCHWALD: Objection.

2 THE COURT: Sustained.

3 MR. NAWADAY: May I approach, your Honor?

4 MR. GOLTZER: May we have that read back -- I'm sorry,
5 it's very difficult -- the answer.

6 (Record read)

7 MR. NAWADAY: May we approach, your Honor?

8 THE COURT: Yes.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E87nchr2

Baynes - direct

1 (At sidebar)

2 MR. NAWADAY: I believe the objection is a hearsay
3 objection.

4 MR. BUCHWALD: Leading.

5 MR. NAWADAY: It is not being offered for the truth.
6 I asked him what did you tell them.

7 THE COURT: Was that the objection.

8 MR. BUCHWALD: The objection was leading. My
9 objection was leading.

10 THE COURT: OK. As to leading, I am going to overrule
11 it. This is obviously an important witness, but we are having
12 some difficulty with him. To the extent we can get through
13 this material, I don't think that this particular question and
14 answer or this particular question is controversial.

15 MR. BUCHWALD: We disagree, your Honor.

16 MR. GOLTZER: It's critical.

17 MR. BUCHWALD: It is critical.

18 THE COURT: What he asked was what did you tell him.

19 MR. GOLTZER: There are numerous statements that are
20 contradictory that come in over a number of hours of
21 questioning. To the extent that he can or can't recall, the
22 jury should be able to evaluate his demeanor without the
23 prosecutor injecting himself into the process.

24 MR. BUCHWALD: What did he tell him is fine. That is
25 a nonleading question. I think the last one that I objected to

E87nchr2

Baynes - direct

1 was in very leading form. What did he will tell them I have no
2 objection to. That's fine.

3 MR. GOLTZER: There is no hearsay objection.

4 THE COURT: OK.

5 MR. NAWADAY: I just want to make sure. I thought my
6 last question was, Did you tell them about your involvement.

7 THE COURT: Right. That was the last question.

8 MR. NAWADAY: I don't think that is a leading
9 question. It's a yes or no. Though it is a yes or no answer,
10 it's not leading because the answer isn't presented in the
11 question.

12 MR. BUCHWALD: First you have to exhaust what he
13 remembers telling them before you can go into did you tell him
14 this did you tell him that.

15 MR. GOLTZER: To the extent that you are suggesting
16 the subject matter before he can recount what happened, you are
17 suggesting an answer.

18 MR. BUCHWALD: That is fair. You have to ask him
19 first for a narrative. Then, if there's something you believe
20 he left out, we can deal with it.

21 THE COURT: OK. See if you can't do that.

22 MR. GOLTZER: Thank you.

23 (Continued on next page)
24
25

E87nchr2

Baynes - direct

1

2

(In open court)

3

BY MR. NAWADAY:

4

Q. I will rephrase the last question. What do you mean by
that you told them you walked into a robbery?

5

6

A. That I saw a robbery -- I went there to buy drugs, and I
saw a robbery happen. And that's when I was trying to leave,
and they grabbed me.

8

9

Q. Who grabbed you?

10

A. The people that was robbing, the robbers.

11

Q. What did you tell the Newburgh Police Department at that
point about what happened to you next?

12

13

A. That I was stabbed, and after that I was stabbed and I got
out free and ran away.

14

15

Q. Was that true?

16

A. No.

17

Q. That night did you tell the Newburgh Police Department
anything else about what happened?

18

19

A. No.

20

Q. About how long did you speak with the Newburgh Police
Department then?

21

22

A. For hours.

23

MR. GREENFIELD: May we have a time frame.

24

Q. That night?

25

A. For hours, hours and hours.

E87nchr2

Baynes - direct

1 Q. Was that the only thing you told them that night, what you
2 just said?

3 A. That I can think of, that's it.

4 Q. Did there come a time when you were charged with the
5 robbery that happened that night?

6 A. Yes.

7 Q. Around when was that?

8 A. April 6, 2011.

9 Q. Who prosecuted you for that robbery?

10 A. The state.

11 Q. Prior to that arrest and prosecution, had you ever been
12 arrested and convicted of anything?

13 A. No.

14 Q. What were you initially charged with by the state?

15 A. Murder, robbery, burglary, and possession of a weapon,
16 assault.

17 Q. Did there come a time when you pled guilty?

18 A. Yes.

19 Q. What did you plead guilty to?

20 A. To a robbery.

21 Q. Was that pursuant to a cooperation agreement?

22 A. Yes.

23 Q. With what agency?

24 A. The state and federal, both.

25 Q. In order to get that cooperation agreement, what did you

E87nchr2

Baynes - direct

1 have to do?

2 A. I had to tell them everything I did before, before and
3 after again about that crime, for that crime.

4 Q. Did you only have to tell them about the robbery?

5 A. No. Everything.

6 Q. What do you mean by everything?

7 A. Stuff that happened before, years, years before.

8 Q. Did you have to tell them about other crimes you have
9 committed?

10 A. Yes.

11 Q. Who were you telling these things to?

12 A. The state.

13 Q. Who was typically there when you met with the state?

14 A. My lawyer, the DA, and a state, a state detective.

15 Q. About how many meetings did you have with the state
16 prosecutors?

17 A. I didn't understand.

18 Q. About how many meetings?

19 A. Probably around five.

20 Q. Did you ultimately admit to your participation in the
21 robbery?

22 A. Yes.

23 Q. Did you describe the participation of others?

24 A. Yes.

25 Q. What is your understanding of your obligations under your

E87nchr2

Baynes - direct

1 cooperation agreement?

2 A. I tell the truth, don't lie, and get a recommendation.

3 Q. Mr. Baynes, I'm going to hand you what's been marked for
4 identification as Government Exhibit 422. I will ask you to
5 look at it and please tell us if you recognize it.

6 A. Yes.

7 Q. What does this appear to be?

8 A. The agreement that I had to sign.

9 Q. Turning to the last page of what's been marked for
10 identification as Government Exhibit 422. Do you recognize any
11 signatures?

12 A. Yes.

13 Q. Whose signatures do you recognize?

14 A. Mine and my lawyer.

15 Q. The government offers Government Exhibit 422.

16 MR. GOLTZER: No objection.

17 MR. BUCHWALD: No objection.

18 THE COURT: 422 will be received.

19 (Government's Exhibit 422 received in evidence)

20 Q. Is that your cooperation agreement, Government Exhibit 422?

21 A. Yes.

22 Q. What is your understanding of what you have to do under
23 your cooperation agreement?

24 A. I have to tell everything that happened and testify on this
25 case.

E87nchr2

Baynes - direct

1 Q. Are you allowed to lie under your agreement?

2 A. No.

3 Q. Are you allowed to commit more crimes?

4 A. No.

5 Q. Do you have to tell the government about all the crimes you
6 committed and all the people you committed them with?

7 A. Yes.

8 Q. What is your understanding what the government has to do if
9 you do what you are supposed to do under your agreement?

10 A. A lower sentence.

11 Q. I think you mentioned a recommendation.

12 A. Yes.

13 Q. What is your understanding of what this recommendation is?

14 A. That I get a letter to the judge for a lower sentencing.

15 Q. And who sends that letter?

16 A. The prosecutors.

17 Q. And who gets that letter?

18 A. The judge.

19 Q. If the judge gets that letter, what can the judge do? What
20 is your understanding?

21 A. Sentence me to anything lower.

22 Q. What is your understanding of, if the judge gets that
23 recommendation, the lowest sentence you could get?

24 A. Time served.

25 Q. If you get that recommendation, what's the highest sentence

E87nchr2

Baynes - direct

1 you can get?

2 A. 17.

3 Q. 17 what?

4 A. Years.

5 Q. What sentence are you hoping to get?

6 A. Time served.

7 Q. If you don't get a recommendation letter, what is your
8 understanding of what sentence you could possibly get?

9 A. 17 years here on a possible federal indictment.

10 MR. GOLTZER: Possible what?

11 THE WITNESS: Federal indictment.

12 Q. About how many people did you tell the government you
13 committed crimes with?

14 A. Around 15.

15 Q. Do you know what the government did with that information
16 you provided?

17 A. No.

18 Q. Were you ever a member of a gang?

19 A. Yes.

20 Q. Which gang?

21 A. Star Status.

22 Q. Did you tell the government about members of Star Status?

23 A. Yes.

24 Q. Under your agreement, did you have to testify against any
25 of them if called upon?

E87nchr2

Baynes - direct

1 A. Yes.

2 Q. Did you consider any of the members of Star Status your
3 friends?

4 A. Yes.

5 Q. Would you have to testify against them under your
6 agreement?

7 A. Yes.

8 Q. Does your sentence depend on the outcome of this trial?

9 A. No.

10 Q. What is your understanding of what happens if you lie under
11 your agreement?

12 A. I will have no agreement.

13 Q. What is your understanding of what happens if you tell the
14 truth?

15 A. Then I get the recommendation.

16 Q. What sentence are you hoping to get?

17 A. Time served.

18 Q. Has anyone told you what sentence you will get?

19 A. No.

20 Q. Who decides your sentence?

21 A. The judge.

22 Q. In what court did you plead guilty?

23 A. State.

24 Q. Where did you go after you pleaded guilty in state court?

25 A. To the fed, federal case.

E87nchr2

Baynes - direct

1 Q. Did there come a time when you had meetings with
2 representatives of the federal government?

3 A. Yes.

4 Q. Approximately how many meetings did you have?

5 A. Around five to ten.

6 Q. Who was typically present?

7 A. The DA, sometimes my lawyer and an FBI agent.

8 Q. What did you have to talk about during those meetings?

9 A. This case and cases and crimes I committed before this
10 case.

11 Q. What kinds of crimes did you talk about?

12 A. Robberies, selling drugs of all sorts, and holding guns.

13 Q. I want to talk about some of the crimes that you told the
14 government about. Have you ever stolen any cars?

15 A. Yes.

16 Q. How many times have you done that?

17 A. Twice.

18 Q. And what did you do --

19 MR. BUCHWALD: I was going to ask you to keep your
20 voice up, too. I'm sorry.

21 Q. What did you do with the cars you stole?

22 A. Just rode around Newburgh in them.

23 Q. Mr. Baynes, please keep your voice up. Did you steal those
24 cars alone or with other people?

25 A. With other people.

E87nchr2

Baynes - direct

1 Q. Who did you steal those cars with?

2 A. Somebody named Geo, G., Snipes, that's it that I can think
3 of.

4 Q. Did you steal anything out of the cars you stole?

5 MR. BUCHWALD: Can we have that read back. I'm sorry.

6 A. Geo, G. and Snipes.

7 MR. BUCHWALD: Three people?

8 THE WITNESS: Yes.

9 Q. Did you steal anything out of those cars?

10 A. Yes.

11 Q. What?

12 A. Radio systems, money, iPods, anything that we could find.

13 Q. Around what year did you steal those cars?

14 A. '08, '09.

15 Q. About how many robberies have you committed?

16 A. Around five, six.

17 Q. Who did you typically rob?

18 A. Drug dealers.

19 Q. Why did you target drug dealers?

20 A. Because they had the most money on them.

21 Q. Did you do those robberies alone or with others?

22 A. With others.

23 Q. Who did you commit those robberies with?

24 A. Somebody -- Reckless, Quay Quay --

25 MR. BUCHWALD: Your Honor, can we break them down. We

E87nchr2

Baynes - direct

1 have been talking about six all together.

2 THE COURT: To the extent that you can, Mr. Nawaday.

3 Q. Mr. Baynes, just generally, who did you commit the
4 robberies with?

5 A. Reckless.

6 MR. BUCHWALD: Again, objection, your Honor, because
7 the prosecutor is lumping together other robberies with a
8 robbery that --

9 THE COURT: The objection will be overruled.

10 Q. Who did you commit robberies with?

11 A. Reckless, Quay Quay, Marcus.

12 Q. Anyone else?

13 A. Freaky.

14 MR. GOLTZER: Freaky?

15 THE WITNESS: Yes.

16 (Continued on next page)

17

18

19

20

21

22

23

24

25

E879chr3

Baynes - direct.

1 Q. You mentioned robberies. About how many robberies did you
2 do with Reckless?

3 A. Around four.

4 Q. How did you first meet Reckless?

5 A. Through his little brother.

6 Q. Who is his little brother?

7 A. Quay Quay.

8 Q. About how long have you known Reckless?

9 A. Since '09 or '08. Around '08.

10 Q. Were you ever part of any gangs with Reckless?

11 A. Yes.

12 Q. What gang?

13 A. Star Status.

14 Q. Who else was in Star Status?

15 A. Quay Quay, Marcus, James, Pooters, T'Andre.

16 Q. Do you know someone named Quick?

17 A. Quick, yes.

18 Q. Was quick a member of Star Status?

19 A. No.

20 Q. You mentioned somebody named Freaky?

21 A. Yes.

22 Q. Who is Freaky?

23 A. T'Andre's older brother.

24 Q. Did you know Freaky by any other names?

25 A. Tyrik.

E879chr3

Baynes - direct.

1 Q. Was Freaky a member of Star Status?

2 A. Yes.

3 Q. I'm going to hand you was been marked for identification as
4 Government Exhibit 209 and -- 209.

5 Do you recognize that?

6 A. Yes.

7 Q. Who is that?

8 A. Freaky.

9 MR. NAWADAY: Government offers Government Exhibit
10 209.

11 THE COURT: Any objection?

12 MR. GOLTZER: Just for the record we wish to preserve
13 all prior objections to the nature of the testimony in general
14 so we won't --

15 THE COURT: Very well.

16 MR. GOLTZER: We won't mention that we have an
17 objection to the upcoming exhibits.

18 THE COURT: I'm sorry.

19 MR. GOLTZER: We're not going to mention that we have
20 no objection to upcoming exhibits because we had prior
21 conversations about this type of testimony.

22 THE COURT: Very well.

23 Q. I'm going to hand you what's been marked for identification
24 Government Exhibit 211. Do you recognize that?

25 A. Yes.

E879chr3

Baynes - direct.

1 Q. What is it?

2 A. A picture of Geo.

3 MR. NAWADAY: Government offers Government Exhibit
4 211.

5 THE COURT: I'm sorry?

6 THE WITNESS: Geo.

7 THE COURT: 211 will be received. Did I receive 209?
8 If I did not, I will. 209 is received.

9 (Government's Exhibits 209 and 211 received in
10 evidence)

11 Q. Who is Geo?

12 A. The person that I did burglaries and was riding in the cars
13 with, one of them.

14 Q. Are you talking about the stolen cars?

15 A. Yes.

16 Q. Geo you're referring to?

17 A. Yes.

18 THE COURT: I'm sorry. Mr. Baynes when you were
19 testifying earlier about stolen cars you said that you did that
20 with Geo, G, was that another person?

21 THE WITNESS: Yes.

22 THE COURT: And then there was a third person that you
23 said.

24 THE WITNESS: Snipes.

25 THE COURT: Thank you.

E879chr3

Baynes - direct.

1 BY MR. NAWADAY:

2 Q. I'm going to hand you what's been marked for identification
3 Government Exhibit 212. Do you recognize that?

4 A. Yes.

5 Q. What is it?

6 A. A picture of Quay.

7 MR. NAWADAY: Government offers Government Exhibit
8 212.

9 THE COURT: 212 will be received.

10 (Government's Exhibit 212 received in evidence)

11 Q. Around when were you in Star Status with Reckless?

12 A. '09 to this case.

13 Q. And around what year was Star Status formed?

14 A. '09.

15 Q. How was it formed?

16 A. We was a part of a gang called Black Flag and Reckless went
17 to branch off to make his own.

18 Q. Do you know what ranks are?

19 A. Yes.

20 Q. What are ranks?

21 A. A level of position that people have.

22 Q. Did you have any rank at Star Status?

23 A. Yes.

24 Q. What was your rank?

25 A. I was second.

E879chr3

Baynes - direct.

1 Q. Did Reckless have any rank status?

2 A. Yes.

3 Q. What was that?

4 A. He was first.

5 Q. In 2009 2010 how often did you see Reckless?

6 A. Almost everyday.

7 Q. What did you typically do with him when you saw?

8 A. I partied, drink, went to school together, everything.

9 Q. What school was that?

10 A. NFA.

11 Q. I want to talk about some of the robberies you committed
12 with Reckless. Did you ever rob someone outside of a party?

13 A. Yes.

14 Q. And around when did that happen?

15 A. Around '010.

16 Q. What happened?

17 A. We was inside of the party, Reckless came to me and Freaky
18 and told us that there was somebody outside of the party that
19 wasn't from here, wasn't from Newburgh. So he told us to come
20 with him. And we came outside and once we got -- to him,
21 Reckless brought out two guns and we robbed -- me and Freaky
22 took his money and jewelry.

23 Q. Jewelry?

24 A. Yes.

25 Q. And around where was this party?

E879chr3

Baynes - direct.

1 A. On South Miller Street.

2 Q. What town?

3 A. What time?

4 Q. What town?

5 A. Newburgh.

6 Q. You said we were there. Who was there?

7 A. It was -- it was a party. It was like most everybody that
8 was Star Status was -- a lot of people that was Skull Gang in
9 Southside.

10 Q. What is Skull Gang?

11 A. A gang of young guys.

12 Q. Who did you do the robbery with?

13 A. Freaky and Reckless.

14 Q. What did you get out of the robbery?

15 A. A couple of hundreds.

16 Q. Was that the only robbery you did that night?

17 A. No.

18 Q. What other robbery did you do that night?

19 A. After that we -- me and Reckless went across town to
20 Heights side and we walked up to random person and robbed him.
21 And Reckless pulled out a gun and the guy gave us all his
22 money.

23 Q. Around where did that happen?

24 A. Carson Street. Inside Heights. Newburgh.

25 Q. What did you get out of that robbery?

E879chr3

Baynes - direct.

1 A. A couple hundreds.

2 Q. Have you ever robbed anyone near City Terrace in Newburgh?

3 A. Yes.

4 Q. What happened with that robbery?

5 A. One night I was walking towards Reckless' house. It was
6 raining. He -- he was outside by himself. I walked up to him
7 and asked him what he was doing. He told me he was trying to
8 get a come up and he told me to stay with him.

9 So I stayed there with him and like 20 minutes later
10 somebody walked up and we robbed -- he pulled out a gun on him
11 and I took everything that he had.

12 Q. You used the words "come up." What's a come up?

13 A. Quick way -- a robbery for a quick way to get money.

14 Q. Do you know who that victim was?

15 A. No.

16 Q. Do you know if he was a drug dealer?

17 A. No.

18 Q. What were you hoping to get?

19 A. Money.

20 Q. Were you ever asked by Reckless or Freaky to go to a
21 robbery that you didn't go to?

22 A. To what?

23 Q. To go to a robbery that you ended up not going to?

24 A. Yes. Yes.

25 Q. And what happened with that?

E879chr3

Baynes - direct.

1 A. Like the next day they -- Quay Quay was telling me that --
2 that they robbed people that was in the Heights and that that
3 once they -- it was seven of them or -- around seven of them
4 when they walked up to them and they robbed one of them and the
5 other person they tried to rob but he didn't want to give them
6 anything so Freaky shot him in the leg and they ran. They was
7 in a shootout with somebody, Quiotis. Named Quiotis.

8 Q. Were you ever approached before that robbery happened to go
9 along?

10 A. Yes.

11 Q. And what happened when you were approached?

12 MR. BUCHWALD: Could we have a timeframe?

13 THE COURT: Yes, Mr. Nawaday. Establish a timeframe.

14 BY MR. NAWADAY:

15 Q. Around what year was?

16 A. '010. I don't know what month.

17 Q. So what happened when you were first approached about this
18 robbery?

19 A. I was with my Godbrother and we just came -- we just left.
20 So he didn't want to go back to the Heights. So I told him
21 that I couldn't go.

22 Q. You mentioned the Heights. What are the Heights?

23 A. Across town, the other side of town where all of us hang
24 out.

25 Q. Please describe the other robberies that you've done

E879chr3

Baynes - direct.

1 besides the ones you've just mentioned.

2 A. That's a time me and Laquavious and Marcus we -- we robbed
3 a Spanish guy outside of the Heights. We end up jumping him
4 and taking his money and his chain.

5 Q. Around when was that?

6 A. The beginning of '010 or the ending of '09.

7 Q. Who were you with when you did that?

8 A. Marcus and Quay Quay.

9 MR. BUCHWALD: Could somebody repeat the last two
10 answers. The testimony was '09 and '10.

11 THE WITNESS: The beginning of '09 -- I mean ending of
12 '09 beginning of '010.

13 MR. NAWADAY: Mr. Baynes, please keep your voice up.

14 Q. Who was with you with that one?

15 A. Marcus and Quay Quay.

16 Q. The same Quay Quay?

17 A. Yes.

18 Q. You say you jumped somebody. Please describe what you did.

19 A. We walked up to him. And we ended up hitting -- we punched
20 him. We ended up jumping him. He fell on the ground. We took
21 all his money and his chain.

22 Q. Please describe another robbery you've done.

23 A. It was time I was walking home. And I was with James,
24 somebody, a friend of him named HB. And we was walking around.
25 And once we came to my house we just trying to get a come up

E879chr3

Baynes - direct.

1 again and James saw somebody with a big chain on. So he
2 snatched it off his neck and we all ran to the pawn shop.

3 Q. Around when was that?

4 A. '010.

5 Q. Have you committed any burglaries?

6 A. Yes.

7 Q. About how many?

8 A. Around two.

9 Q. Please describe them.

10 A. G, somebody named G. He had a girl that lived inside of
11 the Kenny's Complex. And she used to leave her door opened for
12 him to come every night. So one time he told us that we was
13 going to all go inside and we waited real late. So we all went
14 inside the house. And started taking everything. And
15 that's -- we took the car -- her mother's car keys and that's
16 when we ended up joy riding inside the car.

17 Q. How did this burglary come about?

18 A. It was just a normal day. And I don't know.

19 Q. Who were you with?

20 A. Geo, G, and Snipes.

21 Q. That's the same Geo?

22 A. Yes.

23 Q. Around when was this?

24 A. Around '09.

25 Q. What did you get out of the burglary?

E879chr3

Baynes - direct.

1 A. Laptops, iPods, phones, money, liquor, and then we took the
2 car.

3 Q. What did you do with the car?

4 A. We drove around and left it at a random spot.

5 Q. Whose car was it?

6 A. The girl mother's.

7 Q. Who was that girl again?

8 A. I don't know her name.

9 Q. Have you ever participated in any assaults?

10 A. Yes.

11 Q. About how many?

12 A. Around like 30.

13 Q. Were weapons used in those assaults?

14 A. No. Some -- sometimes.

15 Q. Say that again.

16 A. Yes. Sometimes.

17 Q. What kind of weapons?

18 A. Knives and sticks, you know.

19 Q. And typically what led to those assaults that you
20 participated in?

21 A. Just gang, gang stuff.

22 Q. Do you know who Smoke is?

23 A. Yes.

24 Q. Who is that?

25 A. Somebody from Newburgh that sells weed.

E879chr3

Baynes - direct.

1 Q. Did you ever participate in an assault on smoke's stack?

2 A. Yes.

3 Q. How did that come about?

4 A. One day Reckless called me, Pooters, Quay Quay, and Dubose
5 to Lander Street and he point out his smoke stack and told us
6 to beat him up for it.

7 Q. Please name the people you were with again.

8 A. Pooters, Dubose, Quay Quay, and that's it.

9 Q. Spell Pooters.

10 A. P-O-O-T-E-R-S.

11 Q. And spell Dubose.

12 A. D-U-B-O-S-E.

13 Q. Around when did that happen?

14 A. Around wintertime in '010.

15 Q. Do you know why Reckless wanted you to do that?

16 A. He had a gun under Smoke's father's porch. And when the
17 cops came, Smoke's father making a big scene. So they got into
18 an argument. And he was telling him to move his gun. And
19 while the cops was there. So once the cops left, Reckless
20 grabbed his gun and that's when he called us.

21 Q. Who is us?

22 A. Me, Pooters, Dubose, Quay Quay.

23 Q. What did Reckless tell you?

24 A. He just pointed and told us to get him.

25 Q. What did you do?

E879chr3

Baynes - direct.

1 A. I had a stick in my hand. I told everybody that I was
2 going to hit him and tell everybody just follow up.

3 Q. What happened?

4 A. I walked up to him. I hit him. And then that's when
5 Dubose, Pooters, and Quay Quay started fighting.

6 Q. How did the fight end?

7 A. Somebody was screaming our names so we ended up running
8 away.

9 Q. Have you ever gotten into a fight when you tried to stab a
10 rival gang member?

11 A. Yes.

12 Q. Around when did that happen?

13 A. '010.

14 Q. What happened?

15 A. I was hanging out in the Heights with somebody named Freddy
16 and I -- some people named -- I heard that it was Crip I didn't
17 get along with. And they drove up to me and we was arguing.
18 And then one of them tried to pick up a garbage can. And I
19 tried to stab them with the knife -- with a knife. And it
20 broke. And then after that they ended up jumping me after
21 that.

22 Q. Who ended up jumping you?

23 A. The Crip people, Crips.

24 Q. You mentioned Crips. What are Crips?

25 A. A gang that beat -- that was beefing with Blood, Bloods.

E879chr3

Baynes - direct.

1 Q. Do you know why they jumped you?

2 A. I didn't me -- I didn't get along with them.

3 MR. BUCHWALD: I'm sorry. Could we have that read
4 back.

5 (Record read)

6 Q. What happened after they assaulted you?

7 A. Reckless showed up with a bag and he had it -- he was
8 acting -- he did have a gun inside and he was saying that
9 whoever was Crip he will shoot them right now.

10 Q. What happened after that?

11 A. We ended up leaving and we went to my house and we stole a
12 gun from my mom's boyfriend.

13 Q. Who is we?

14 A. Me and Reckless.

15 Q. What kind of gun was it?

16 A. .380.

17 Q. What happened next?

18 A. After that we went looking for them.

19 Q. Did you ever find them?

20 A. We found one of them. We ended up jumping him after that.

21 Q. Where do you mean, jump?

22 A. Both me, Reckless was fighting.

23 Q. And what happened?

24 A. After that we just -- we went away.

25 Q. What happened with that .380?

E879chr3

Baynes - direct.

1 A. We kept it. Reckless kept it mostly.

2 Q. Did you ever get it back from Reckless?

3 A. We shared it some -- but he had it most of the times but I
4 could have if I wanted.

5 Q. I think you said you sold drugs before?

6 A. Yes.

7 Q. What drugs did you sell?

8 A. Crack.

9 Q. Where did you sell it?

10 A. Dubois --

11 MR. BUCHWALD: Timeframe.

12 MR. NAWADAY: Your Honor, may we have a quick sidebar?

13 THE COURT: Sure.

14 (Continued on next page)

15

16

17

18

19

20

21

22

23

24

25

E879chr3

Baynes - direct.

1 (At the sidebar)

2 MR. NAWADAY: Your Honor, I'd object to Mr. Buchwald
3 continuing to interrupt my examination asking for timeframe. I
4 will get the timeframe when I think it's appropriate. If the
5 timeframe is important to him he can ask on cross-examination.
6 But for him to suggest that I need to ask timeframe at the
7 beginning of every section of my questions is inappropriate.

8 MR. BUCHWALD: Your Honor, my client is charged with a
9 four-year drug conspiracy, a four-year robbery conspiracy. We
10 know there's only about a five-month period where he's not in
11 custody during that time. So it's important to know are we
12 talking about something that involves that time period or
13 doesn't involve that time period.

14 THE COURT: I suppose Mr. Nawaday is objecting to
15 the -- what I'm guessing is the assumption that he won't get to
16 timeframe and that you are disturbing the flow of the direct
17 examination. It's difficult enough. This witness is
18 completely tapping my powers of concentration because I'm
19 trying to listen so very carefully. So I think that I would
20 also recommend, Mr. Buchwald, that we all assume that
21 eventually Mr. Nawaday will get to that information rather than
22 suggest to him when he should bring it out.

23 MR. BUCHWALD: The problem is if he doesn't, am I
24 expected then to go through all of his direct because otherwise
25 I'll move to strike if we don't eventually get it because we've

E879chr3

Baynes - direct.

1 been through a number of things where we didn't get it until I
2 asked.

3 THE COURT: Then you have something to ask on
4 cross-examination. I think, you know, the objection --
5 Mr. Nawaday's complaint is well placed. So let him conduct the
6 examination. Assume that he will get to a timeframe and if he
7 doesn't then you can ask in cross-examination.

8 (Continued on next page)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E879chr3

Baynes - direct.

1 (In open court)

2 BY MR. NAWADAY:

3 Q. Where did you typically sell crack?

4 A. Dubois Street.

5 Q. And around when did you start selling crack?

6 A. '010. Around '010.

7 Q. Where on Dubois Street?

8 A. Dubois and Van Ness, around.

9 Q. What was the second street?

10 A. Van Ness.

11 MR. NAWADAY: Ms. McInerney can you please pull up
12 what's already in evidence as Government Exhibit 250.

13 Q. Do you recognize that?

14 A. Yes.

15 Q. This is a map of Newburgh. Do you see the area where you
16 sold drugs in about 2010?

17 A. Yes.

18 Q. And where was Dubois and Van Ness?

19 A. The same street as St. Luke's Hospital but closer to
20 Broadway.

21 Q. I'd like to go back briefly to when you were jumped by the
22 Crips.

23 A. Yes.

24 Q. Do you know if the Bloods and Crips got along?

25 A. They didn't.

E879chr3

Baynes - direct.

1 Q. Were you Blood?

2 A. No.

3 Q. Were you friendly with Bloods?

4 A. Yes.

5 Q. Did you only sell on Dubois?

6 A. Yes.

7 Q. Do you know what other areas in Newburgh where crack was
8 sold?

9 A. Lutheran, Lander, William Street.

10 Q. You said Lutheran. Do you see Lutheran?

11 A. Yes.

12 Q. Where is Lutheran?

13 A. No. I don't see it. It's not there.

14 MR. NAWADAY: Maybe if we can put up Government
15 Exhibit 251.

16 Do you see Lutheran here?

17 THE WITNESS: Yes.

18 Q. Where is Lutheran?

19 A. In between Carpenter and City Terrace.

20 Q. You mentioned before a robbery that happened at City
21 Terrace?

22 A. Yes.

23 Q. What were you referring to?

24 A. (No response).

25 Q. City Terrace that's on the map?

E879chr3

Baynes - direct.

1 A. Yes.

2 Q. For about how long did you sell crack?

3 A. Like a month. Not -- a couple of months out of the year.

4 Not long.

5 Q. How often were you out on Dubois Street selling crack?

6 A. Not often. Just a week or so.

7 Q. How much did you typically make in a week when you were
8 selling crack?

9 A. Around 500, 450.

10 Q. 500, 450?

11 A. Hundred -- dollars.

12 Q. Could anyone sell on Dubois?

13 A. Sometime -- not -- yeah, mostly yes.

14 Q. How did it work when you sold crack on Dubois Street?

15 A. You just sit there. If crackheads walk by you or walk up
16 to you, if they walk by you just tell them that you got
17 something for them. If they walk up to you then they're going
18 to tell you whatever they need.

19 Q. Were you the only one selling on Dubois at that time?

20 A. No.

21 Q. Who else do you remember when you were out there was also
22 selling on Dubois Street?

23 A. Bloods. And Ashy Bandits.

24 THE COURT: Ashy?

25 THE WITNESS: Ashy Bandits.

E879chr3

Baynes - direct.

1 Q. Who were the Ashy Bandits?

2 A. A gang in Newburgh.

3 Q. Do you know any members of the Ashy Bandits at that time?

4 A. Quay, Geo, Bow Wow, Spazo, Corey, T-Black, T-Rex.

5 Q. When you were out on Dubois Street selling crack, did you
6 ever warn other crack dealers that the police were around or
7 anything like that?

8 A. Yes.

9 Q. Do you know what splits are?

10 A. Yes.

11 Q. What are splits?

12 A. If a crackhead asks me for too much I will to somebody tell
13 them to split, for a split. And they will give me the
14 remaining of what I need and I sell it and we just split the
15 profit.

16 Q. Basically just splitting the sale?

17 A. Yes.

18 Q. Have you done that before?

19 A. No.

20 Q. Have you seen other people do it before?

21 A. Yes.

22 Q. What other people have you seen split?

23 A. (No response).

24 Q. On Dubois Street?

25 A. I don't know. Random people.

E879chr3

Baynes - direct.

1 MR. GOLTZER: Can we have that read back please.

2 THE WITNESS: Random people. Random people. Random.

3 Random.

4 Q. Do you know someone named J-Mark?

5 A. Yes.

6 Q. Who is that?

7 A. A Blood.

8 Q. In 2010 how often, if at all, did you ever see J-Mark?

9 A. Every couple of weeks, once like a couple of weeks.

10 Q. Where did you typically see him?

11 A. On William Street, Lutheran Street.

12 Q. Do you know if J-Mark was affiliated with any gangs?

13 A. Blood. He was Blood.

14 Q. Do you know J-Mark by any other names?

15 A. Yes.

16 Q. Do you know someone by the name of Kev Gotti?

17 A. Yes.

18 Q. Who is that?

19 A. A Blood too that would be on Lutheran and First Street.

20 Q. Did you know Kev Gotti by any other names?

21 A. No.

22 Q. I'm going to show you what's been marked for identification
23 as Government Exhibits 206, 206C, and 220, and 220B.

24 Starting with 206 and 220. Do you recognize those?

25 A. Yes.

E879chr3

Baynes - direct.

1 Q. What are they?

2 A. A picture of Kev Gotti and J-Mark.

3 Q. And is 220B a nameplate that has the name J-Mark?

4 A. Yes.

5 Q. I'm going to hand you what's been marked for identification
6 as 206C. Is this a nameplate with the name Kev Gotti?

7 A. Yes.

8 MR. NAWADAY: Government offers Government Exhibits
9 206 and 206C and 220 and 220B.

10 MR. GOLTZER: No objection.

11 THE COURT: 206 and 206C and 220 and 220B will be
12 received.

13 (Government's Exhibits 206 and 206C and 220 and 220B
14 received in evidence)

15 Q. Do you see on your screen, Mr. Baynes, Government Exhibit
16 206?

17 A. Yes.

18 Q. Who is that?

19 A. That's Kev Gotti.

20 MR. NAWADAY: And Ms. McInerney if we can please put
21 up Government Exhibit 220.

22 Q. Who are we looking a lot here?

23 A. J-Mark.

24 Q. Back in 2010, 2009 and 2010 do you know how Reckless made
25 money?

E879chr3

Baynes - direct.

1 A. Robberies and selling drugs.

2 Q. Do you know how he got money to buy the drugs he sold?

3 A. No. Mostly from robberies.

4 Q. What drug, drugs did Reckless sell?

5 A. Crack.

6 Q. Do you know where Reckless sold drugs?

7 A. Broadway, Dubois, and Lander.

8 Q. What was the first?

9 A. Broadway and Dubois.

10 Q. And how do you know that?

11 A. I saw him.

12 Q. What did you see?

13 A. I saw -- I saw him like call crackheads to him, bring them
14 to him. Alleyways and stuff.

15 Q. What did you see him do?

16 A. He just go in the alleyway and he'll come back out putting
17 money in his pocket.

18 Q. How did you know that the people he was meeting with when
19 you saw him were crack cocaine customers?

20 A. Some of them I sold to.

21 Q. Some of them you had sold to before?

22 A. Yes.

23 Q. About how often did you see Reckless on Dubois or Lander?

24 A. Like a -- like a -- months, like months here. And he would
25 sell for like a whole month and then a couple of months after

E879chr3

Baynes - direct.

1 that he won't sell. Then the next months he will. So months.

2 Q. When you saw Reckless on Dubois was he the only one selling
3 on Dubois around that time?

4 A. No.

5 Q. 2009, 2010?

6 A. No.

7 Q. Had you seen anyone else sell on Dubois in 2009 and 2010
8 besides Reckless?

9 A. Yes.

10 Q. Did you know any of those people?

11 A. Some of them.

12 Q. Who are some of the people you knew?

13 A. Bow Wow, L-1, and -- (pause) um.

14 Q. You said you saw Bow Wow?

15 A. Yes.

16 Q. Where did you see Bow Wow doing?

17 A. I seen him like sitting on a porch and somebody -- a
18 crackhead would come up and he'll point to the -- inside of a
19 hallway and like seconds later he will follow him, follow the
20 crackhead inside.

21 Q. Do you know if Reckless ever sold crack to Freaky?

22 A. Yes.

23 Q. How do you know that?

24 A. I saw him.

25 Q. And around when did you see Reckless with Freaky?

E879chr3

Baynes - direct.

1 A. '010.

2 Q. What did you see him actually doing?

3 A. They just be on Lander selling just -- both of them would
4 be on Lander together and doing the same thing, like crackheads
5 would come. They would both sell.

6 Q. What were you typically doing when you were out there?

7 A. Either just stopping by to see what's up or hanging out
8 there with them.

9 Q. Do you know where Reckless stored his crack?

10 A. No. I saw him one time. He had it inside of a cup but I
11 don't know if -- other times. I don't know other times.

12 Q. What did you see in his cup?

13 A. He had a cup full of crack and he had it inside the rice.
14 He said it was to keep it fresh.

15 Q. And describe how the crack is placed in this cup of rice.

16 A. All in baggies inside. They was just -- it was mixed up
17 all together. And you can just see -- see some of them, top of
18 some of them, inside the cup. It was a see-through cup.

19 Q. About how big was that cup?

20 A. Normal size. Just like a -- a normal cup that you get from
21 like a Chinese spot that they give the soup in.

22 Q. Can you describe how tall it was?

23 A. Like around this tall. And type, skinny like.

24 Q. Can you do that again, Mr. Baynes.

25 A. Just around this tall, like a skinny cup. Not skinny but a

E879chr3

Baynes - direct.

1 normal cup size.

2 MR. NAWADAY: May the record reflect that the witness
3 is describing with his hands a height of about eight-inches.

4 MR. BUCHWALD: Eight-inches.

5 THE COURT: Very well.

6 Q. You said you saw bags in the rice?

7 A. Yes.

8 Q. What were in the bags?

9 A. Crack.

10 Q. What does crack look like?

11 A. It's hard. Like a -- like a cream, off-white, yellow
12 color.

13 Q. And what shape does it have?

14 A. Circle. Like a circle. Some of them square. Like -- like
15 a box.

16 Q. About how many bags of crack did you see in that cup?

17 A. Around like 15, 20.

18 Q. And please describe the size of those bags.

19 A. Some of them was dimes and some of them was 20s.

20 Q. What do you mean dimes?

21 A. Ten-dollar bags.

22 Q. What do you mean 20s?

23 A. 20-dollar bags.

24 Q. Around when was this that you saw this cup?

25 A. Like winter of '010.

E879chr3

Baynes - direct.

1 Q. In 2009, 2010 how often did you see Bow Wow out on Dubois
2 Street?

3 A. Like most -- when I walk past him when -- not -- not often
4 but some -- sometimes I see him when I walk past.

5 Q. Going back to the Ashy Bandits. Who are the Ashy Bandits
6 you knew?

7 A. Bow Wow, Spazzula, T-Rex, Quay, Geo.

8 Q. Do you know someone named Fuzzy?

9 A. Yes.

10 Q. Who is Fuzzy?

11 A. He was an Ashy Bandit too.

12 Q. Mr. Baynes, please speak clearly.

13 A. Yes.

14 Q. I'm going to show you what's been marked for identification
15 as Government Exhibit 218. Please tell us if you recognize
16 that?

17 A. Yes.

18 Q. What is it?

19 A. A picture of Fuzzy.

20 Q. Of who?

21 A. Fuzzy.

22 Q. Did you know Fuzzy by any other names.

23 A. No.

24 MR. NAWADAY: The government offers Government Exhibit
25 218.

E879chr3

Baynes - direct.

1 THE COURT: No objection. 218 will be received.

2 (Government's Exhibit 218 received in evidence)

3 Q. Do you if you know the Ashy Bandits were Blood?

4 A. Now most of them had to turn Blood.

5 Q. Do you know what flagging is or peacing someone is?

6 A. Peacing somebody is like a handshake that Bloods do and
7 flagging is just having a red flag.

8 Q. What do you mean having a red flag?

9 A. Having a red flag in your right pocket. It's just -- the
10 color and the flag that Bloods have.

11 Q. Do you know what it means when somebody flags?

12 A. No. Most that they Blood. That's what I --

13 Q. Can you repeat that?

14 A. That they're Blood. I don't really know what.

15 Q. Who of the people you've mentioned have you seen either
16 peace someone or flag?

17 A. Bow Wow, Quay, Spazo. That's it.

18 Q. Have you ever seen Gucci peace someone, flag someone?

19 A. No.

20 Q. Have you ever seen Reckless peace someone or flag them?

21 A. No.

22 Q. Did Star Status get along with the Bloods?

23 A. Yes. Sometimes.

24 Q. Have you ever carried a gun?

25 A. Yes.

E879chr3

Baynes - direct.

1 Q. Around what years did you carry a gun?

2 A. Around '010, '09.

3 Q. What kind of gun did you carry?

4 A. I carried .380, a .22, and a .45.

5 Q. Going through each one, where did you get each of those
6 guns that you carried?

7 A. The .380 I got from my mom's boyfriend. The .22 Marcus,
8 somebody named Marcus had. And the .45 Freaky and Reckless
9 had.

10 Q. And on what occasions did you carry those guns?

11 A. Just random occasions. Just -- yeah, random.

12 Q. What do you mean by random?

13 A. I can be walking down the street and I just, if somebody
14 give it to me I carry it.

15 Q. Have you ever seen Reckless with a gun?

16 A. Yes.

17 Q. On about how many occasions and during what years?

18 A. Around like '10, '09 and '010.

19 Q. About how often did you see Reckless with a gun in that
20 time period?

21 A. Every -- every couple of days, weeks. Every couple of
22 months.

23 Q. Do you know if during 2009, 2010 what kinds of guns
24 Reckless had?

25 A. A .22, a .380, and a .45. That's it.

E879chr3

Baynes - direct.

1 Q. Have you ever seen Reckless carrying a gun while he was out
2 on Dubois Street?

3 A. No. But -- like I never seen it but I knew. But I
4 never -- like he never pulled it out.

5 Q. What do you mean he never --

6 MR. GOLTZER: Objection.

7 THE COURT: Overruled. You can ask a follow-up
8 question.

9 Q. What do you mean?

10 A. You could see the bulge of the gun. He -- you could just
11 see the bulge of it inside his pants or.

12 Q. And when you saw that bulge, about how close were you
13 typically?

14 A. I was right in front of him.

15 Q. And how often did you see Reckless in 2009 and 2010?

16 A. Everyday almost.

17 Q. Do you know where he kept his guns?

18 A. Mostly out of Freaky's house they kept all their guns
19 together at Freaky's house.

20 Q. How do you know that?

21 A. I saw them. I saw them bring out all of them together.

22 Q. Do you know if Reckless shared guns with anyone?

23 A. Yes.

24 Q. Who?

25 A. Freaky.

E879chr3

Baynes - direct.

1 Q. Did Reckless ever talked about his guns that he shared with
2 Freaky?

3 A. Yes. Once they bring them out, yes.

4 Q. What did he talk about?

5 A. About how light -- like how light it is, what's easier to
6 get away with carrying. And what's louder, like stuff, like
7 describing them.

8 Q. And describe the guns you saw -- where was this that you
9 saw these guns, whose house?

10 A. Freaky's.

11 Q. Describe the guns you saw at Freaky's house?

12 A. I saw all black, small, .380; a silver, long .22; and like
13 a big .45.

14 THE COURT: Mr. Nawaday, it's 12:30. Why don't we
15 break for lunch. Ladies and gentlemen we'll break until, it's
16 12:30 now, until 1:45. So please be sure to be in the jury
17 room no later than 1:45 so we can get started promptly. Until
18 then, please do not discuss the case.

19 (Jury excused)

20 (Continued on next page)

E879chr3

Baynes - direct.

1 (In open court)

2 THE COURT: Mr. Baynes, you can step down.

3 (Witness excused).

4 THE COURT: Everyone can be seated.

5 We have another couple hours, Mr. Nawaday?

6 MR. NAWADAY: Yes, your Honor.

7 THE COURT: Okay. Any issues to be brought up? I see
8 no hands.

9 MR. BUCHWALD: Say that again.

10 THE COURT: Any issues?

11 MR. GOLTZER: The only issue is --

12 MR. NAWADAY: Your Honor, may I suggest, for before
13 the jurors come out, if we could have, if the defense is okay
14 with it, have Mr. Baynes sit there, adjust the microphone so
15 that it's in a good spot for him. I think it's a little too
16 close and it's fuzzing out.

17 THE COURT: The problem that we have with this witness
18 stand, unfortunately, is that there is a table -- and I sat
19 here yesterday -- and the table is very low so that there's
20 only so far that the chair can be brought forward. And the
21 microphone obviously can be adjusted but the person would have
22 to lean well over. Mr. Baynes is, from what I can tell, at
23 least six inches taller than I am, so it's more difficult for
24 him. I tried experimenting yesterday with putting the
25 microphone up on the higher portion of the bench but it does

E879chr3

Baynes - direct.

1 not allow -- it does not have enough flexibility to.

2 MR. BUCHWALD: What about that hand mic that we were
3 using for the jurors? It's impossible to hear him.

4 THE COURT: We could try. Does this work? Does this
5 work?

6 MR. NAWADAY: May I suggest using the Federal Code or
7 something to raise the microphone to adjust for his height.

8 THE COURT: If I had a Federal Code we could use it.

9 Maybe this will work. Maybe we'll go with this. That
10 way he can adjust it more.

11 MR. GOLTZER: Your Honor, this may be unnecessary
12 about much of the testimony is clearly that having to do with
13 gangs and the like, was the subject of motions in limine.
14 We're not objecting because it's our understanding of the rule
15 that those objections are preserved.

16 THE COURT: Right. Okay.

17 Anything further?

18 So we'll see you all at 1:45.

19 (Luncheon recess)
20
21
22
23
24
25

E87nchr4

Baynes - direct

A F T E R N O O N S E S S I O N

(1:55 p.m.)

(Jury present)

THE COURT: Everyone please be seated.

Mr. Nawaday.

BY MR. NAWADAY:

Q. Before the break, you had mentioned someone named Smoke?

A. Yes.

Q. I am going to hand you what's been marked for
identification as Government Exhibit 219. Tell me if you
recognize that.

A. Yes.

Q. What is it?

A. A picture of Smoke's mom or aunt, one of them.

Q. Do you know that person's name?

A. Danielle.

MR. NAWADAY: The government offers Government Exhibit
219.

THE COURT: No objection, 219 will be received.

(Government's Exhibit 219 received in evidence)

Q. Again, it is on the juror's screen. Who are we looking at
here?

A. Danielle, Smoke's mom.

Q. Danielle?

A. Huh?

E87nchr4

Baynes - direct

1 Q. Danielle?

2 A. Yes.

3 Q. Have you ever seen Reckless shoot?

4 A. Yes.

5 Q. Were you ever present at a party at Vail Gates or Vails
6 Gate when a shootout occurred?

7 A. Yes.

8 Q. Around when what is that?

9 A. '010.

10 Q. Do you know what season?

11 A. No. I think summer.

12 Q. Did you say summer?

13 A. I think the summer.

14 Q. What happened?

15 A. A fight broke out, and it was like Newburgh versus
16 out-of-town people. We was fighting, and then somebody pulled
17 out a gun, named Big Mike, and Reck -- he started shooting and
18 then Reckless took the gun from him and started shooting at the
19 car.

20 Q. Who was Big Mike?

21 A. Somebody that was from the South Side.

22 Q. What you do mean the South Side?

23 A. A gang, South Side.

24 Q. Who were you at the party with?

25 A. South Side Star Status people.

E87nchr4

Baynes - direct

1 Q. Who were the particular people you were at the party with?

2 A. Reckless Quay Quay, S-Dot.

3 Q. Who is S-Dot?

4 A. Somebody that's School gang.

5 Q. What is School gang again?

6 A. A gang.

7 Q. What did you see Reckless do, if anything, when the fight
8 broke out?

9 A. He took the gun from Big Mike and started shooting at the
10 car that the people got inside.

11 Q. How close were you to Reckless when he started shooting?

12 A. I was right there.

13 Q. Who was the fight between?

14 A. Newburgh versus out-of-town people.

15 Q. Versus out-of-town people?

16 A. Yes.

17 Q. How did the fight end?

18 A. The cops came and we all walked to the laundromat down the
19 street.

20 Q. Who is "we all"?

21 A. Everybody that was on the Newburgh, like, the Newburgh
22 side.

23 Q. What did you do when you got to the laundromat?

24 A. We called up the guys to come get us.

25 Q. Where did you go?

E87nchr4

Baynes - direct

1 A. Back to the main part, the town -- I mean the city of
2 Newburgh.

3 Q. Back to where?

4 A. The City of Newburgh.

5 Q. Where was this party?

6 A. Vails Gate.

7 Q. Vails Gate?

8 A. Yes.

9 Q. Were you ever present at any other shootouts at a party
10 with Reckless present?

11 A. Yes. One on Chambers Street.

12 Q. Around when was that?

13 A. '010, early '010.

14 Q. What happened?

15 A. A fight broke out, and after the fight Reckless was
16 shooting in the air.

17 Q. By the way, going back to the Vails Gate party, about how
18 close were you to Reckless when he started shooting?

19 A. I was right next to him.

20 Q. Going back to this Chambers Street party, do you know how
21 the fight broke out?

22 A. No.

23 Q. How close were you when Reckless pulled out a gun and shot
24 in the air?

25 A. Right next to him.

E87nchr4

Baynes - direct

1 Q. How did the fight end?

2 A. It just stopped -- the fight stopped once Reckless was
3 shooting.

4 Q. What happened?

5 A. He was shooting after the fight.

6 Q. What happened after Reckless started shooting again?

7 A. We was walking away and cops came and we all ran.

8 Q. Where did you go?

9 A. I went down to a complex called the Varicks, the Varicks.

10 Q. A complex called what?

11 A. The Varicks.

12 Q. Can spell that please?

13 A. V-a-r-r-i-c-k.

14 Q. How did you get there?

15 A. I ran.

16 Q. Were you with anyone?

17 A. No.

18 Q. Do you know where Reckless went?

19 A. No.

20 Q. Do you know what happened to Reckless?

21 A. He got arrested.

22 Q. How did you learn that?

23 A. After somebody -- I found out once he came over to me and
24 he wrote me.

25 Q. Who told you?

E87nchr4

Baynes - direct

1 A. Reckless.

2 Q. What did he tell you happened?

3 A. That he stopped to pick up somebody, Marcus, and that's the
4 reason why he got caught.

5 Q. What did he tell you --

6 MR. GREENFIELD: Objection, your Honor.

7 THE COURT: Overruled.

8 MR. GREENFIELD: Again, the acoustics here are awful.

9 THE COURT: Is that the objection?

10 MR. GREENFIELD: That is an observation.

11 THE COURT: Actually, the problem now, Mr. Baynes, may
12 be that you're too close to the microphone so let's try to
13 experiment a little bit. OK.

14 MR. GOLTZER: Your Honor, we would request a limiting
15 instruction on this testimony.

16 THE COURT: Sidebar.

17 (Continued on next page)

E87nchr4

Baynes - direct

1 (At sidebar)

2 MR. GOLTZER: I respectfully suggest that the
3 testimony about Reckless getting into fights with folks that
4 have nothing do with us or nothing to do with the charged
5 crimes is at best for them 404(b) and shouldn't be admitted
6 against our clients for any purpose.

7 MR. NAWADAY: Your Honor, I think so long as the
8 instruction makes clear that each defendant is charged in
9 separate counts, that some defendants aren't charged in
10 particular counts, and they have to consider each defendant
11 individually as to a charge, what the charges are.

12 MR. GOLTZER: I have no problem with that. I would
13 like the Court to instruct the jury that certain evidence in
14 the case comes in against one and not others, and this is one
15 of them.

16 MR. BUCHWALD: I would say that 70 percent of the
17 testimony up to this point has been about Reckless' involvement
18 with guns or with fights or with assaults, none of which has
19 been related to robberies of drug dealers in which our clients
20 are alleged to be involved or to sales of drugs in which our
21 clients are alleged to have been involved. All of this is
22 essentially 404(b) with respect to Reckless. There should be
23 instruction that all of that testimony is simply against
24 Reckless and not against our clients, unless there is some
25 proffer tying it.

E87nchr4

Baynes - direct

1 MR. GOLTZER: I don't think you need to say
2 necessarily it is admissible against Reckless, but you need to
3 say it's not admissible against Thomas and Whitaker.

4 MR. NAWADAY: First, I disagree that there is no
5 evidence or testimony about drug dealing with respect to your
6 clients.

7 MR. GOLTZER: There was.

8 MR. NAWADAY: There was.

9 MR. GOLTZER: He said about 70 percent of it.

10 MR. BUCHWALD: I said 70 percent, and none with
11 respect to my client.

12 MR. NAWADAY: Pardon.

13 MR. BUCHWALD: None with respect to my client, at
14 least that I have heard. Maybe there was something I didn't
15 hear.

16 MR. NAWADAY: You are correct about the drug dealing
17 with respect to that with your client. Insofar as the limiting
18 instruction, I think the issue for us is that this evidence is,
19 one, is Giglio as to this witness; number two, the evidence of
20 this witness's relationship with Reckless is frankly background
21 of the criminal conduct charged, which is the robbery and
22 murder. It shows their close relationship.

23 So we would object to any limiting instruction saying
24 you cannot consider these facts, that Reckless and Baynes had
25 committed to these crimes together against the other defendants

E87nchr4

Baynes - direct

1 to the extent that then the jury will be left with a confusing
2 view that there is no that -- the criminal relationship --

3 MR. GOLTZER: How about a limiting instruction to the
4 effect that it's only offered as background?

5 MR. NAWADAY: That's fine.

6 MR. GOLTZER: And not substantive evidence against
7 Mr. Whitaker or Mr. Thomas.

8 THE COURT: That's what I would propose to do, that it
9 is being offered as background concerning how these individuals
10 know each other.

11 MR. NAWADAY: That is perfect.

12 MR. GOLTZER: But not Reckless, not Whitaker and
13 Thomas. We are also raising a 403 objection because this is
14 unduly prejudicial, and to the extent it may be background, it
15 is substantially outweighed by the prejudice. We are going to
16 raise that objection as well, of course.

17 THE COURT: OK.

18 (Continued on next page)
19
20
21
22
23
24
25

E87nchr4

Baynes - direct

1 (In open court)

2 THE COURT: Ladies and gentlemen, you have heard
3 testimony in part this afternoon by Mr. Baynes, that he was
4 present at times where there were fights or shootings, that
5 Mr. Christian was involved in fights at parties, things of that
6 nature. Obviously none of the defendants here are being
7 charged with having fights at parties or shooting at parties.
8 This information is being elicited by the government in part to
9 show the background of the relationship between Mr. Baynes and
10 Mr. Christian, so it should be considered by you in that
11 regard. And this should not be considered against Mr. Thomas
12 or Mr. Whitaker.

13 Very well.

14 MR. GOLTZER: Thank you, Judge.

15 THE COURT: Mr. Nawaday.

16 Q. Mr. Baynes, I think we were just talking about the party at
17 Chambers Street where you learned that it later that Reckless
18 got caught?

19 A. Yes.

20 Q. What did you learn from Reckless about what happened after
21 he left that party?

22 A. That he got -- that he tried to help somebody and he went
23 to pick him back up, and that's when he ended up getting
24 caught.

25 Q. Did he describe any details of how he got caught?

E87nchr4

Baynes - direct

1 A. He just said --

2 MR. GREENFIELD: Objection, Judge.

3 THE COURT: Overruled.

4 A. He just said, when he first started running he threw the
5 gun in the air, somebody tripped and fell, and he stopped and
6 picked him up. And after that he, like he tried to hide and
7 they saw him, where he went to.

8 Q. Did he tell you what happened with the gun?

9 A. That they got the gun, but a screw or something came out.

10 Q. Can you say that again?

11 A. That they found the gun, but like a screw or something came
12 out that made it not be able to work.

13 Q. What came out about not being able to work?

14 A. Like a spring or something. I don't know.

15 Q. Who is the they who found this gun?

16 A. The cops.

17 Q. Do you know who Little Homey is?

18 A. Yes.

19 Q. Who is he?

20 A. A person that was a Mac Baller, a Blood, sir.

21 Q. What is Mac Baller?

22 A. A Bloods set.

23 Q. What do you mean a Bloods set?

24 A. A branch of Bloods, a branch of Bloods that is under
25 Bloods.

E87nchr4

Baynes - direct

1 Q. Do you know if Reckless was ever involved with the shooting
2 with Little Homey?

3 A. Yes.

4 Q. Around when was that?

5 A. '010.

6 Q. What do you know about that?

7 A. I seen Reckless like a week later and he was at his
8 grandmother's house and he told me that he wanted that -- he
9 told me that he shot Little Homey, he said he shot him like
10 seven times, that he fell in the garbage can, that he was still
11 shooting at him and that he wanted me to get rid of a gun for
12 him.

13 Q. Did you do that?

14 A. No.

15 Q. Back in 2009, 2010 do you know if Reckless was still in
16 school?

17 A. Yes.

18 Q. And what school?

19 A. NFA.

20 Q. Same school you were in?

21 A. Yes.

22 Q. During that time period did you communicate by Facebook?

23 A. Yes.

24 Q. Did he use his real name as a user name or a different
25 name?

E87nchr4

Baynes - direct

1 A. Different name.

2 Q. What names has he used if you know?

3 A. He used Flea, Flea -- no, Fly Guy, La Flare, Reckless.

4 Q. Am I right that you said Fly Guy.

5 A. Yes.

6 Q. La Flare?

7 A. Yes.

8 Q. And Reckless?

9 A. Yes.

10 Q. Did you use your real name as a user name back then?

11 A. No.

12 Q. What names have you used?

13 A. Biggah Flea Guy YGonna.

14 Q. Did you say Biggah Flea Guy?

15 A. Flea Guy YGonna.

16 Q. Those are two separate names?

17 A. Just the whole name, Biggah Flea Guy YGonna.

18 Q. Biggah Flea Guy YGonna?

19 A. Yes.

20 MR. NAWADAY: Your Honor, at this time we would like
21 to read in a stipulation.

22 THE COURT: Very well.

23 MR. NAWADAY: This is marked for identification
24 Government Exhibit 905.

25 It is hereby stipulated and agreed by and between the

E87nchr4

Baynes - direct

1 United States by Preet Bharara, United States Attorney for the
2 Southern District of New York.

3 THE COURT: Slow down, sir.

4 MR. NAWADAY: Andrew Bauer, Kan M. Nawaday, and
5 defense counsel and the parties, and the defendants that:

6 1. Or about June 25, 2014, a New York State
7 trooper -- let me back up -- stipulated and agreed that, if
8 called to testify a law enforcement officer with the New York
9 State troopers, the Officer, would testify that:

10 1. On or about June 24, 2014, the officer went to the
11 publicly available Facebook website page of the person with the
12 Facebook user name of La Flare, defined as the La Flare
13 Facebook page. The officer then downloaded pages directly from
14 the La Flare Facebook page and pasted them into Microsoft
15 PowerPoint files.

16 2. Government Exhibit 301 contains -- I believe it
17 should be 301A -- contains true and correct copies of excerpts
18 from the La Flare Facebook page as downloaded by the officer on
19 June 24, 2014.

20 This stipulation marked for identification as
21 Government Exhibit 905 is signed by the parties.

22 Your Honor, the government offers Government Exhibit
23 301A, and also there is a typographical error on government
24 Exhibit 905. It should refer to Government Exhibit 301A, not
25 301. I believe there is no objection to that. The government

E87nchr4

Baynes - direct

1 offers Government Exhibit 905 as well.

2 THE COURT: Any objection?

3 There being no objection, Government Exhibits 301A and
4 905 will be received.

5 (Government's Exhibits 301A and 905 received in
6 evidence)

7 BY MR. NAWADAY:

8 Q. I am going to hand you what is already in evidence as
9 Government Exhibit 301A. Flipping through Government Exhibit
10 301A, are there any photographs you recognize?

11 A. Yes.

12 Q. Is there an individual depicted in those photographs?

13 A. Yes.

14 Q. Who is depicted in the photographs, the majority of the
15 photographs on Government Exhibit 301A?

16 A. Reckless.

17 Q. Does this appear to you to be pages from Reckless's
18 Facebook page from about 2010?

19 A. Yes.

20 Q. What was his user name at that point?

21 A. La Flare.

22 Q. La Flare?

23 A. Yes.

24 Q. I would like to walk through some of the postings on
25 Government Exhibit 301A.

E87nchr4

Baynes - direct

1 Turn to the second page it should appear on your
2 screen. Do you see the posting dated January 27, 2010 on page
3 2?

4 A. Yes.

5 Q. And what does it say there?

6 A. "Star Status goons on deck."

7 Q. What is the third word?

8 A. Goons.

9 Q. Have you ever heard Reckless use the term "goons"?

10 A. Yes.

11 Q. Have you ever used the term "goons"?

12 A. Yes.

13 Q. What is a goon?

14 A. A person that's like, like that the person that put in
15 work, like that does shootings and sorts of stuff.

16 Q. What do you mean by work?

17 A. Crimes.

18 Q. Have you ever heard the term "on deck"?

19 A. Yes.

20 Q. What does "on deck" mean?

21 A. Like, here. Like, right here. Like, that I got him on
22 standby, like, right here, ready to go.

23 Q. And in the posting dated January 31, 2010, do you see the
24 phrase --

25 A. Yes.

E87nchr4

Baynes - direct

1 Q. -- "holla at me"?

2 A. Yes.

3 Q. Have you ever used that phrase?

4 A. Yes.

5 Q. Have you ever heard Reckless use that phrase?

6 A. Yes.

7 Q. What do you understand that phrase to mean?

8 A. Get at me. Like, what's up, like, talk to me.

9 MR. NAWADAY: Ms. McInerney, if you can please turn to
10 page 3 of Government Exhibit 301A. Do you see the last word on
11 page 3?

12 A. Yes.

13 Q. What does "HMU" stand for?

14 A. Hit me up.

15 Q. What do you understand that to mean?

16 A. To write me, like, talk to me.

17 MR. NAWADAY: Ms. McInerney, if we can please turn to
18 page 4 of Government Exhibit 301A.

19 Q. Mr. Baynes, if you can read what that posting is.

20 A. "Chyllen with my shun Baynes, hit me up."

21 Q. Mr. Baynes, do you know if Reckless knew any other Baynes
22 besides you?

23 A. No.

24 Q. What does the word, if you know, "shun" mean?

25 A. Like, son. It's just son spelled differently.

E87nchr4

Baynes - direct

1 Q. Can you say that again and step back from the microphone.

2 A. It's just son spelled differently.

3 Q. The word son spelled differently?

4 A. Yes.

5 Q. Turning to page 6, the posting dated May 2, 2010 at the
6 bottom. Can you read that?

7 A. "Maxxing fuck with us Star Status niggas, we wavy."

8 Q. What is maxing?

9 A. Trouble, like.

10 Q. What does it mean to be wavy?

11 A. The talk of the town. Like live. Like, the talk. Like,
12 we, like, we are just the livest people, the people that --

13 Q. Are you saying loudest?

14 A. Live, livest.

15 Q. Livest?

16 A. Yeah, like, I don't know how to explain it. We the people
17 that everybody wants to be.

18 Q. The people that everyone wants to be?

19 A. Yeah.

20 Q. Turning to page 9. Do you know the posting at the bottom
21 of page 9 dated May 20, 2010?

22 A. Yes.

23 Q. Can you please read that?

24 A. "Maxing in Lighthouse with brazy Baynes, hit me up."

25 Q. Do you know what Lighthouse is?

E87nchr4

Baynes - direct

1 A. That was the night school that I was in.

2 Q. The night school you were in?

3 A. Yes.

4 Q. What was the name of that night school?

5 A. Light -- huh, the Lighthouse, the Lighthouse.

6 Q. Who were you in that night school with?

7 A. Reckless.

8 Q. Do you know what the word "brazy" means?

9 A. Crazy.

10 Q. Do you know why it's spelled with a B and not a C?

11 A. It is just something like Bloods do. Bloods do that.

12 Q. Do you know why they do that?

13 A. They don't use Cs.

14 Q. Why not? If you know?

15 A. Because it's for -- I mean, Cs is for Crips.

16 Q. C is for what?

17 A. Crips.

18 Q. Mr. Baynes, maybe if you can just stand back a little bit.

19 Turn to page 10. At the top there is a posting from La Flare

20 dated May 24, 2010.

21 Do you recognize that phrase, that posting?

22 A. Yes.

23 Q. What do you recognize it from?

24 A. A song.

25 Q. From what?

E87nchr4

Baynes - direct

1 A. A song.

2 Q. What song?

3 A. A Waka Flocka song "Love Dem Gun Sounds."

4 Q. Who is Waka Flocka?

5 A. A rapper.

6 Q. Is this a lyric from a Waka Flocka song?

7 A. Yes.

8 Q. Is there anything different about the Waka Flocka song and
9 this posting?

10 A. He puts "Star Status," and the guns are changed to .22 and
11 9.

12 Q. So am I right that what's different is the word "Star
13 Status" is put into the lyric?

14 A. Yes.

15 Q. And what changes about the guns?

16 A. The type of gun, to a .22 and to a 9.

17 Q. Do you know if Reckless ever had a .22?

18 A. Yes.

19 Q. Do you know if he ever had it?

20 A. Yes.

21 Q. What is the actual lyric from that Waka Flocka song?

22 A. "Ring alarm, them boys in town, like JOC, lay that pussy
23 nigga down, I don't talk, I don't laugh, I just frown, from the
24 eagle to the chopper, I love that gun sound."

E87nchr4

Baynes - direct

1 Q. From the eagle to the what?

2 A. Chopper.

3 Q. What is a chopper?

4 A. An AK.

5 Q. An AK-47?

6 A. Yes.

7 Q. So in the lyric, the lyric refers to a chopper?

8 A. Yes.

9 Q. Here it refers to a .22 and a 9?

10 A. Yes.

11 Q. What is an eagle?

12 A. A desert eagle. A gun, a desert eagle.

13 Q. And that's in the lyric?

14 A. Yes.

15 Q. Turning to page 12, the June 5, 2010 posting at the bottom
16 of page 12.

17 Can you read that posting?

18 A. "Yo why these heights niggas snitching Nygee and Day Day,
19 damn, I thought y'all was tough, LOL, but I might do this seven
20 years, something like out of 10 stacks ball -- actually 10
21 stacks bail, Free freaky and Ty Murda, Star Status all day."

22 Q. Do you know a Freaky?

23 A. Yes.

24 Q. Who is freaky again?

25 A. Tyrik, Ty Murda, Tyrik.

E87nchr4

Baynes - direct

1 Q. And it says here, Free Freaky. Do you know if Freaky was
2 ever arrested?

3 A. Yes.

4 Q. Turning to page 14, the posting dated June 8, 2010. Can
5 you read that?

6 A. "Macking and all that. Hit me up, Star Status, you
7 already, I get money and it don't cost a thing to get popped."

8 Q. Do you know where that phrase is from?

9 A. I don't, no.

10 Q. Do you know what the word "popped" means?

11 A. Shot.

12 Q. Turning to page 15, the posting dated June 16, 2010.

13 Can you read that?

14 A. "Macking, stacking this bread on my flea boy shit, hit me
15 up, Star Status."

16 Q. Do you know what "bread" refers to?

17 A. Money.

18 Q. What does "stacking bread" mean?

19 A. Saving -- like, saving, yeah.

20 Q. Do you know who this is referring to as "flea boy"?

21 A. Yes. Reckless, like fly.

22 Q. Can you say that again?

23 A. I said, flea is like fly. Like flea is like another word
24 for fly.

25 Q. Flea is another word for fly?

E87nchr4

Baynes - direct

1 A. Yes.

2 Q. Turning to page 18, the posting at the bottom dated July 7,
3 2010.

4 Can you read that, please.

5 A. "Jewelry three below, niggas get Peter rolled, tunnel
6 vision on that money, I don't see ya ho, free my son, Ty
7 Murda."

8 Q. Do you know what "Peter rolled" means?

9 A. Body, killed.

10 Q. Turn to page 19. The first posting dated July 12, 2010,
11 can you read that?

12 A. "Macking on Dubois getting money, holla at me 1.

13 Q. Have you ever seen Reckless on Dubois Street?

14 A. Yes.

15 Q. Have you ever seen Reckless on Dubois Street dealing drugs?

16 A. Yes.

17 Q. Going back to the July 12, 2010 posting, "Macking on
18 Dubois," what does getting money mean?

19 A. Getting money, like, trapping. I mean, selling.

20 Q. Selling what?

21 A. Crack.

22 Q. Turning to page 20, the posting dated July 25, 2010 at the
23 top. Can you read that?

24 A. "Last night was wavy, with AD Poppa, E Dubs, Baynes Dev
25 Rock, James Pooters and some Middletown chicks shaking my head,

E87nchr4

Baynes - direct

1 bitches is nasty. Hit me up, though."

2 Q. It refers to Pooters. Is that the same footers you
3 referred to before?

4 A. Yes.

5 Q. There is a reference to James. You had mentioned a James
6 before, is that the same James or a different James?

7 A. The same.

8 Q. Page 23, the posting dated July 30, 2010. Please read
9 that.

10 A. "Macking with my left hand Baynes. I got da gallon of
11 Henny and a half pound of kutch who trying to get wavy and
12 everything on me, LMAO. Hit me up, though."

13 Q. What does my left hand Baynes mean?

14 A. It's like same as right hand, like right hand.

15 Q. The same as the right hand?

16 A. Yes.

17 Q. What did he mean by that?

18 A. Like a person that you do most stuff with, like your main
19 person.

20 Q. Like right-hand man?

21 A. Yes.

22 Q. If you can turn to page 31. It is an October 5, 2010
23 posting at the top. Can you read that?

24 A. "Fuck 2 to 6, I'm about to go to Court hit me up. Where my
25 son Baynes at?"

E87nchr4

Baynes - direct

1 Q. Do you see there's postings below that?

2 A. Yes.

3 Q. Who are these postings from?

4 A. Me, and Reckless.

5 Q. Who are you?

6 A. "Biggah Flea Guy YGonna."

7 Q. What was this conversation about?

8 A. Meeting up.

9 Q. Where were you going to meet up?

10 A. On William and Southwest.

11 Q. Please turn to page 33. It is a posting dated December 15,
12 2010. Can you read that?

13 A. "What the fuck niggas keep putting my name in shit, shaking
14 my head hate, Newburgh people.

15 Q. What does putting somebody's name in shit mean?

16 A. Putting, like, telling a story and then having that person
17 name inside of it, like, like, putting -- when you tell
18 somebody something and you tell it, you put that person's name
19 in it, like, saying it.

20 Q. Did you ever use that phrase?

21 A. Yes.

22 Q. In the days after the 54 Chambers robbery were you using
23 Facebook?

24 A. Yes.

25 Q. Did you post anything similar about people putting your

E87nchr4

Baynes - direct

1 name in shit?

2 A. Yes.

3 Q. When you did that what were you talking about?

4 A. Everybody.

5 Q. What was the thing that your name was being put into that
6 you were talking about?

7 A. The murder that happened at 54 Chambers Street.

8 Q. Why were you posting that people were putting your name
9 into that on Facebook?

10 A. Because people was telling me a whole bunch of like random
11 stories saying that they thought, what they heard happened.

12 Q. Why were you posting about the fact that people were
13 putting your name into it on Facebook?

14 A. Just so that they can, like, think that nothing, everything
15 didn't have nothing to do with me, nothing that was involving
16 me.

17 Q. What did you just say?

18 A. So they wouldn't think that anything was involving me.

19 Q. That you weren't involved in it?

20 A. Yes.

21 Q. But you were involved in it?

22 A. Yes.

23 Q. Turning to page 34, the posting dated April 6, 2011. Can
24 you read that?

25 A. "I had a dream I was rich, but I woke up with a couple of

E87nchr4

Baynes - direct

1 stacks and a gun in my hand shaking my head."

2 Q. What are stacks?

3 A. Thousands.

4 Q. Thousands of what?

5 A. Of dollars.

6 Q. Turning to page 35, it is a posting. Can you read that.

7 A. "Free my son Baynes. He's a innocent man, word too."

8 Q. When were you arrested?

9 A. April 6.

10 Q. What year?

11 A. 2011.

12 Q. Turning to page 39, who is that in the photograph? Do you
13 know?

14 A. Reckless.

15 Q. Page 42, who is that in the photograph?

16 A. Reckless.

17 Q. Page 43, who is that in the photograph?

18 A. Reckless.

19 Q. I want to turn to the robbery at 54 Chambers Street. Why
20 were you going to rob that location?

21 A. Why what?

22 Q. Why were you going to rob 54 Chambers Street?

23 A. For money and drugs.

24 Q. What kind of drugs were you looking for?

25 A. Weed, crack, coke, anything like that.

E87nchr4

Baynes - direct

1 Q. Was that the only location you had been looking at to rob?

2 A. No.

3 Q. What other locations did you look at?

4 A. A spot on Lander, a spot on City Terrace, a spot on
5 Johnson, on South Miller -- I mean South Street.

6 Q. You keep saying the word "a spot." What do you mean by a
7 spot?

8 A. A crack spot or a weed spot.

9 Q. What is a crack spot?

10 A. A place they sell crack at.

11 Q. What is a weed spot?

12 A. A place they sell weed at.

13 Q. How soon before the robbery did you learn that the plan was
14 to rob a drug spot?

15 A. Like that same day.

16 Q. Did you have any conversations with Reckless before the day
17 of the robbery about robbing a drug spot?

18 A. Yes.

19 Q. About how soon before the day of the robbery did you have
20 those conversations?

21 A. Like two weeks before.

22 Q. What conversations did you have?

23 A. Just walking past the spot, we're just, you know, a spot,
24 saying that that is a good spot, a lot of people go there and
25 stuff, and what makes the most money.

E87nchr4

Baynes - direct

1 Q. Mr. Baynes, please speak up and just answer that question
2 again.

3 A. We was -- we, like, walked around and we would point out a
4 random spot, and we'd just say which one makes the most money
5 and had the most people coming.

6 Q. Who came up with the idea to rob a drug spot?

7 A. Reckless.

8 Q. And why did you need money?

9 A. To start selling our own drugs.

10 Q. What do you mean by that?

11 A. We was going to start selling on star -- I mean, on Dubois
12 Street and Lander Street, start selling.

13 Q. What do you mean your own stuff?

14 A. Our own supplies that we was -- instead of robbing and
15 stuff like that, we would have our own stuff.

16 Q. Where were you getting the drugs to sell before?

17 A. We robbed, like, other drug dealers.

18 Q. What was the point of robbing a drug spot?

19 A. To front, like, to have, so we would have more, more money
20 for drugs.

21 (Continued on next page)

E879CHR5

Baynes - direct

1 Q. Was there a particular place you wanted to sell after the
2 robbery?

3 A. Dubois Street and Lander Street.

4 Q. I think you said you were walking around pointing out
5 places. Who were you walking around with?

6 A. Days before the robbery just me and Reckless. But the day
7 of the robbery, me, Reckless, and Lou. Then me Reckless and
8 Quay were.

9 Q. So let's talk about the day of the robbery. Did you meet
10 Reckless that day?

11 A. Yes.

12 Q. When did you first meet him?

13 A. Around like twelve, eleven.

14 Q. In the afternoon or night?

15 A. Afternoon.

16 Q. And what did you do when you first met with Reckless that
17 day?

18 A. We started walking around and he was just pointing out
19 spots and saying that which one was good to rob.

20 Q. And at that point who were you walking with?

21 A. Me, Reckless, and Lou.

22 Q. Who is Lou?

23 A. A friend I was with.

24 Q. Was he a member of Star Status?

25 A. No.

E879CHR5

Baynes - direct

1 Q. After you walked around with Reckless and Lou, what
2 happened?

3 A. We end up dropping off Lou and going to pick up Quay Quay.

4 Q. Where did you pick up Quay Quay?

5 A. At Reckless's grandmother's house.

6 Q. Where is Reckless's grandma's house?

7 A. Broadway.

8 Q. On Broadway?

9 A. Yes.

10 Q. What happened after you picked up Quay Quay?

11 A. We went back to choosing which spot we was gonna rob.

12 Q. And at that point what spots were in play?

13 A. A spot on Lander Street and 54 Chambers.

14 Q. What was discussed, if anything, about 54 Chambers and this
15 other spot on Landers Street?

16 A. That they have the most people that come to them, the most
17 drugs and stuff.

18 Q. What do you mean they have the most?

19 A. Like more people come to them so they have more money, more
20 drugs, more -- everything.

21 Q. Did there come a time when you went to Dubois Street?

22 A. Yes.

23 Q. Where on Dubois Street did you go?

24 A. Around Dubois and Van Ness.

25 Q. Dubois and Van Ness?

E879CHR5

Baynes - direct

1 A. Yes.

2 Q. Who was there when you went to Dubois Street?

3 A. L-1.

4 Q. And where was L-1 when you saw him on Dubois Street?

5 A. He was on the porch.

6 Q. The porch of what?

7 A. Of a house, apartment I would say.

8 Q. What happened when you got there?

9 A. Him and Reckless started talking and Reckless just end up
10 like filling him in on everything that we was planning on
11 doing.

12 Q. What do you mean Reckless began filling L-1 in on what you
13 were planning on doing?

14 A. He started telling him that we was gonna rob the place and
15 that asking him was he -- just telling him like everything we
16 was doing.

17 MR. NAWADAY: Ms. McInerney if you can please pull up
18 Government Exhibit 204.

19 Q. Who is this person?

20 A. L-1.

21 Q. Was that the person Reckless was talking to?

22 A. Yes.

23 Q. And what, if anything, did L-1 say when Reckless brought
24 this up?

25 A. He was -- yeah, he was just saying he was with it.

E879CHR5

Baynes - direct

1 Q. What do you mean "with it"?

2 A. That he was willing to do it with us, help us.

3 Q. What happened after Reckless said that he was with it?

4 A. He and L-1 end up calling somebody to bring him a gun.

5 Q. And what -- did you hear L-1 have that conversation?

6 A. Yes. He told him to come through with the chain.

7 Q. What is a chain?

8 A. Another word for a gun.

9 Q. And when you heard that from L-1 was he on the phone or was
10 he telling this to someone in person?

11 A. He was on the phone.

12 Q. What happened after L-1 called somebody to bring a chain?

13 A. A lady showed up like five minutes later and L-1 pointed to
14 the house and he just said drop it in the mailbox. So the lady
15 dropped the whole purse in the mailbox and left.

16 Q. Do you know what was in the purse?

17 A. I didn't see it but a gun.

18 Q. Do you know if L-1 made any other calls while you were
19 there?

20 A. Yes.

21 Q. Who else did he call?

22 A. He started calling people and telling them that he had
23 something for them and to come through.

24 Q. After he made those calls did anyone else come to that
25 porch?

E879CHR5

Baynes - direct

1 A. Yes. Somebody named Bash, Bow Wow, and Gucci.

2 Q. You mentioned someone named Bash came?

3 A. Yes.

4 MR. NAWADAY: Ms. McInerney can you please put up
5 Government Exhibit 205.

6 Q. Do you know who that is?

7 A. Yes. Bash.

8 Q. So Bash came and who else came?

9 A. Bow Wow and Gucci.

10 Q. What happened when Bash, Bow Wow, and Gucci arrived?

11 A. We all was about to go inside of the -- inside of the
12 hallway of one of the houses. But me and Bash didn't get along
13 so he said that he didn't want me to come with him. So me and
14 Quay Quay, we was -- we stayed on the porch while all of them
15 went inside.

16 Q. Why did Bash and you not get along?

17 A. We fought once before.

18 Q. What was the fight about?

19 A. I don't know. He just -- we just fought. I guess he
20 didn't like me for some reason.

21 Q. Where did you stay after Bash, Gucci and Bow Wow went into
22 the hallway?

23 A. On the porch.

24 Q. Where was Reckless and L-1 at that point?

25 A. In the hallway where everybody else was.

E879CHR5

Baynes - direct

1 Q. Did you hear any conversation inside?

2 A. L-1 got off the phone and he was telling everybody that he
3 just sent somebody there, into 54 Chambers and that the person
4 said that was good, they just re'd up and that everything was
5 good for us.

6 Q. What does it mean re-up? Is that the word you used?

7 A. Yes. They just bought more supplies, more drugs.

8 Q. Who bought more supplies?

9 A. The people that was selling out of 54 Chambers.

10 Q. And what was L-1 saying to everyone in that hallway?

11 A. That whoever he just called was telling him that it was
12 good, good robbery for us.

13 Q. Why was it a good robbery for you?

14 A. Because they just -- the people that just re'd up and had a
15 lot of drugs in there.

16 Q. Did you and Quay Quay stay on the porch?

17 A. No.

18 Q. Where did you go?

19 A. We end up leaving to my house.

20 Q. Did you say anything to Reckless before you left?

21 A. Right before we left Reckless came out and he asked us
22 where we was going. I told him that we was going back to my
23 house.

24 Q. Where did you go?

25 A. We went to my house.

E879CHR5

Baynes - direct

1 Q. Around what time of night was it when you left the porch?

2 A. I don't know. It was real late though.

3 Q. What did you say?

4 A. It was late. I don't know what time.

5 Q. Was the sun out?

6 A. No.

7 Q. What did you do when you got to your house?

8 A. We stayed at my house for like an hour just on the computer
9 and playing games.

10 Q. Did you stay there all night?

11 A. No.

12 Q. Please speak up, Mr. Baynes.

13 Where did you go?

14 A. We ended up leaving going back to Dubois Street and we
15 didn't see nobody so we went to South Miller Street.

16 Q. And what happened when you got to South Miller Street?

17 A. We ended up seeing a crowd on the porch and we went up to
18 them, asked them did they see Reckless anywhere and they just
19 told us -- they told us that they just left and that we can
20 catch them.

21 Q. What did you do?

22 A. We ended up running to First Street. They was in between
23 South Miller and Johnston on First Street.

24 Q. Who is they?

25 A. Reckless, Bash, Bow Wow, Gucci, and Baby E.

E879CHR5

Baynes - direct

1 Q. Who is Baby E?

2 A. Baby E is Eric. Somebody from the Heights.

3 Q. Was he at L-1's house before?

4 A. No. Not while I was there.

5 Q. How was each person dressed when you caught up to them?

6 A. All black -- all black hoodies, black boots, and facemasks
7 and black flags across their face.

8 Q. When you say black flag, do you mean like a bandanna?

9 A. Yes.

10 Q. Describe the masks.

11 A. Some of them, like the full ski mask that go over their
12 head. Some of them put like the half ski mask that only comes
13 to your nose and you got to strap it in the back.

14 Q. Do you remember what Reckless's mask looked like?

15 A. Half-mask, half-mask that you had to strap in the back.

16
17 Q. What do you mean by half-mask?

18 A. It only came up to your nose. It didn't go all the way up.

19 Q. It only came up to the nose?

20 A. It only came up to your nose.

21 Q. How were you dressed?

22 A. Black hoodie, jeans, and boots too.

23 Q. When you caught up with the rest of them did you see any
24 guns?

25 A. Some of them.

E879CHR5

Baynes - direct

1 Q. Who do you remember seeing with a gun?

2 A. I don't remember who had -- just some people had them.

3 Q. So what happened after you caught up to them?

4 A. Bow Wow end up telling me and Quay Quay to stay and stay
5 lookout for them. And we ended up walking down the street.

6 Q. What do you mean stay lookout for them?

7 A. While they rob, me and him stay lookout for police.

8 Q. You and who?

9 A. Quay Quay.

10 Q. Where did you go?

11 A. We went down First Street to Chambers Street.

12 Q. What happened when you got to Chambers Street?

13 A. Once we got to 54 Chambers, there was three people outside
14 and we robbed them all.

15 Q. How did you rob them?

16 A. They pulled out their guns and then after that they didn't
17 have -- end up emptying their pockets giving us everything.

18 Q. Who pulled out guns?

19 A. Bow Wow, Bash, Reckless, Gucci and Baby E.

20 Q. What were you doing at that point?

21 A. I was in with -- I was there.

22 Q. How close were you to them?

23 A. Right in the circle with everybody.

24 Q. Can you say that again and please say it more loudly and
25 clearly, Mr. Baynes.

E879CHR5

Baynes - direct

1 A. I was in the circle with everybody.

2 MR. GOLTZER: I can't hear. I'm sorry.

3 THE WITNESS: I was in the circle with everybody.

4 MR. BUCHWALD: Can we have that read back.

5 THE WITNESS: I was inside -- I was in the crowd.

6 With everybody else in the crowd.

7 Q. And exactly like that, Mr. Baynes, please speak clearly and
8 loudly.

9 What happened after the men outside were robbed?

10 A. They pointed -- the people that was robbing ended up
11 pointing inside the house and the people that was being robbed
12 ended up walking inside the house. And the robbers was
13 following. Everybody besides me and Quay Quay.

14 Q. So the people who were outside were brought into the house?

15 A. Yes.

16 Q. Who went into the house first?

17 A. Two of the people that was getting robbed outside.

18 Q. And who followed them in?

19 A. Bow Wow, Reckless, Gucci, Baby E and -- and -- and Bash.

20 Q. What did you and Quay Quay do?

21 A. We stayed at the door.

22 Q. What happened next?

23 A. We ended up -- well we opened the door, peaked in and we
24 end up hearing the commotion. So we went inside and we saw
25 Reckless wrestling with somebody, one of the people that was

E879CHR5

Baynes - direct

1 being robbed with a gun in their hand.

2 Q. What did you do when you saw that?

3 A. We end up trying to pull them away from each other. We end
4 up grabbing the guy that was being robbed trying to get him off
5 him.

6 Q. Get him off of who?

7 A. Reckless.

8 Q. I want to backup. Describe the inside of the apartment you
9 went into.

10 A. Once you walked through the door it's like a hallway. Then
11 once you get past the hallway it's, like a big living room.

12 Q. When you first entered, where was everyone besides Reckless
13 and the man he was wrestling with?

14 A. They was -- everybody else was still in the hallway.

15 Q. Describe how you were trying to help Reckless?

16 A. We was grabbing the man and pulling him.

17 Q. Who were you grabbing?

18 A. The guy that was being robbed.

19 Q. And describe how you -- what you saw Reckless and that man
20 doing when you saw them wrestling together?

21 A. They had a gun in the air like and they both was fighting
22 for the gun, both wrestling each other fighting for the gun.

23 Q. About how tall are you?

24 A. Six foot.

25 Q. Is Reckless taller or shorter than you?

E879CHR5

Baynes - direct

1 A. Around the same height.

2 Q. How close were you to Reckless and that man when you were
3 trying to help out?

4 A. I was right there, on him. I was on him, right next to
5 him. Right grabbing him.

6 Q. Grabbing who?

7 A. The person that was being robbed.

8 Q. What happened when you jumped in?

9 A. Reckless let go of the gun. He left. He ran out the room.

10 Quay Quay ended up running out the room. So I tried to hide.

11 And one of the people end up -- that was in another room end up
12 seeing me and he came and grabbed me. He started stabbing me.

13 Q. Who came and started stabbing you?

14 A. One of the people that was being robbed that was inside of
15 another room.

16 Q. Do you know where Reckless's gun was at that point?

17 A. The guy took it from him, the --

18 Q. Which guy?

19 A. The one that he was wrestling with.

20 Q. Do you know what happened, if anything, with Reckless's
21 mask?

22 A. I don't know. He didn't have it on though when I went back
23 inside the room. But I don't know what happened to it.

24 Q. At what point did he not have it?

25 A. Once I ran back inside the hallway, he didn't have no mask

E879CHR5

Baynes - direct

1 on at that time. After all the wrestling with the gun.

2 Q. Was this after you got stabbed?

3 A. Yes.

4 Q. What did you do after you were stabbed?

5 A. I got off the -- I mean I broke free and I ran back into
6 the hallway where everybody else was at.

7 Q. What did you see when you got back in the hallway?

8 A. Once I ran past Baby E started shooting back inside of the
9 living room part of the house and Bow Wow and Bash was
10 kicking -- they was kicking at the door, trying to get it
11 opened.

12 Q. Which door were Bow Wow and Bash kicking at?

13 A. The door that you walk in from the outside.

14 Q. The front door?

15 A. Yes.

16 Q. Which way was Baby E shooting?

17 A. Inside the house, back inside the house.

18 Q. Towards the people who -- that were being robbed?

19 A. Yes.

20 Q. What part of the house were you in at that point?

21 A. In the hallway.

22 Q. About how close to the front door were you?

23 A. Right there.

24 Right there. I can touch the door right there.

25 Q. You were an arm's length?

E879CHR5

Baynes - direct

1 A. Yes.

2 Q. And where were Bow Wow and Bash?

3 A. They was in front of me kicking at the door.

4 Q. Do you know why they were kicking at the door?

5 A. Somebody was, on the outside, holding the door, blocking us
6 from getting out.

7 Q. At that point where was Reckless, Quay Quay, and Gucci?

8 A. They was right behind me. They was behind me.

9 Q. About how far away from you?

10 A. We all was in touching distance. We could all touch each
11 other.

12 Q. Were you bumping up against each other?

13 A. Yes.

14 Q. Do you remember if at any point you were bumping up against
15 Bow Wow?

16 A. No. He was in front of me.

17 Q. What happened after Bash and Bow Wow were trying to kick
18 the door?

19 A. They realized they wasn't going to open it that way so
20 Gucci came and tried helping them and they was taking turns,
21 one of them will pull -- pull the door open. The way that the
22 door opened, it opens towards the inside. So one of them would
23 pull the door open while the other one would stick his hand out
24 and start shooting.

25 Q. Who were the people who were doing that at that point?

E879CHR5

Baynes - direct

1 A. It was Bow Wow, Bash, and Gucci.

2 Q. How were they shooting?

3 A. They were -- have to stick their hand out real quick and
4 shoot. And then hurry up and pull their hand back in before
5 the door shut.

6 Q. And were they each doing this?

7 A. Yes. They was rotating, like taking turns.

8 Q. Please demonstrate how they were shooting.

9 A. They would have to stick their hand out. They would go to
10 the left of the door and they would stick the hand out and
11 start shooting quick and hurry up and pull their hand back in.

12 Q. You're making a motion. What were they shooting through?

13 A. They were shoot like through the crack of the door. Once
14 the door would crack and they just had to hurry up and put
15 their hand out.

16 Q. So am I right when the door became partially opened --

17 A. Yeah.

18 Q. -- they would stick their hand through?

19 A. Yes.

20 Q. And then shoot?

21 A. Yes.

22 Q. Do you know if you were bleeding at any point during this?

23 A. At that time I was bleeding but I thought somebody was
24 scared and they was peeing on me.

25 Q. Why did you think someone was scared?

E879CHR5

Baynes - direct

1 A. Because somebody -- somebody was right behind me and they
2 was rubbing on the spot that I was bleeding at.

3 Q. So at the time you thought someone was peeing on you?

4 A. Yes.

5 MR. GOLTZER: I'm sorry. I couldn't hear you,
6 Mr. Nawaday.

7 Q. So at the time you thought somebody was peeing on you.

8 A. Yes.

9 Q. About how many shots do you remember hearing being fired?

10 A. A lot. I don't remember.

11 Q. What happened next?

12 A. Somebody screamed and then the door was opened and we all
13 ran out -- out the front door. I looked over and saw a man
14 shot and I just kept going.

15 Q. You said somebody screamed. Was it from inside or outside?

16 A. It sounded like it was from the outside.

17 Q. Where did you -- after you ran out of the 54 Chambers where
18 did you see this man?

19 A. Right to the left of the -- right where you walk out, on
20 the left of the wall -- the wall outside of the front of the
21 house.

22 Q. Describe what that man was doing at that point.

23 A. He was just holding on to himself leaning against the wall.

24 Q. Do you remember who the first people out were?

25 A. Whoever was shooting at that point was out first. Because

E879CHR5

Baynes - direct

1 the other two people that was pulling the door open they was
2 like stuck behind the door. And after that it was me and
3 whoever was behind me.

4 Q. So, how many people left before you did?

5 A. One.

6 Q. Who was that person?

7 A. I don't remember. I don't know.

8 Q. And you said the other two people who were helping pull the
9 door were stuck behind the door. What do you mean?

10 A. Like the way that they was pulling the door open, the
11 door -- once they let go, like they was -- the door was
12 blocking them from running outside. So they had to run around
13 it and wait for everybody else to run out.

14 Q. So you were the second one to leave?

15 A. Yes.

16 Q. After you turned back and looked at the man who was
17 clutching himself, what did you do?

18 A. I kept running up First Street.

19 Q. Where did you go?

20 A. I went to Johnston Street and turned down Johnston.

21 Q. When you were running down First Street who was running
22 with you?

23 A. I don't know who was running but it was like four people
24 that I could see.

25 Q. Were they the people --

E879CHR5

Baynes - direct

1 A. Yes. That I was robbing with. They was all people I was
2 there -- I came there with.

3 Q. They were people you went to 54 Chambers to rob 54 Chambers
4 with?

5 A. Yes.

6 Q. You were running with them down First Street?

7 A. Yes.

8 Q. What happened next?

9 A. I turned down Johnston Street and once I turned down
10 Johnston Street Quay Quay said that I was shot because he saw
11 blood going down my legs -- I mean down my pants. So he looked
12 at it and he then -- we end up going to his grandmother's
13 house. His mom end up telling me that I need to go to the
14 hospital, that she was going to take us. But I told her that I
15 could walk. And me and Quay Quay walked to the hospital.

16 Q. Where was Quay Quay's grandma's house?

17 A. On Broadway.

18 On Broadway.

19 Q. On Broadway?

20 A. In between Johnston and South Miller.

21 MR. NAWADAY: Your Honor, I don't know if this is a
22 good time for the afternoon break.

23 THE COURT: Why don't we do that, ladies and
24 gentlemen. It's ten minutes after the hour so please make sure
25 to be in that jury room no later than 25 after.

E879CHR5

Baynes - direct

1 Until then don't discuss the case. Twenty-five after
2 three.

3 (Jury excused)

4 (Continued on next page)

E879CHR5

Baynes - direct

1 (In open court)

2 THE COURT: Mr. Baynes, you may step down.

3 (Witness excused)

4 (Recess)

5 THE COURT: Are we ready?

6 MR. NAWADAY: Yes, your Honor.

7 THE COURT: We have everyone?

8 Mr. Baynes, I'm going to follow up on Mr. Nawaday's
9 instructions. Please, please, try to keep your voice up so we
10 can all hear you.

11 THE WITNESS: Mm-hmm.

12 THE COURT: Not like that.

13 (Continued on next page)

14

15

16

17

18

19

20

21

22

23

24

25

E879CHR5

Baynes - direct

1 (Jury present)

2 THE COURT: Everyone be seated.

3 Mr. Nawaday.

4 MR. NAWADAY: Thank you, your Honor.

5 BY MR. NAWADAY:

6 Q. I want to go back to who had guns. Who were the people you
7 saw who had guns during the robbery?

8 A. Reckless, Bash, Gucci, Bow Wow, and Baby E.

9 Q. That's five?

10 A. Yes.

11 Q. Who did not have guns?

12 A. Me and Quay Quay.

13 Q. Now, when you were trying to help Reckless, how did you put
14 hands on the person Reckless was fighting with?

15 A. Just grabbed him, like wrapped my hands around him. I just
16 pulled him.

17 Q. Did you try to jump on him at any point?

18 A. No.

19 Q. When you say hands on him, please demonstrate that.

20 A. Like first I was grabbing at his shirt. Then I was
21 grabbing at his arms trying to like pull his arms away from the
22 gun. Like just grabbing him.

23 Q. Were only your arms and hands touching him?

24 A. No. My whole body was.

25 Q. Was it just one hand or one arm?

E879CHR5

Baynes - direct

1 A. Both arms, both hands, everything.

2 Q. Of the robbers who was the last one out of that room?

3 MR. GOLTZER: Objection. Lack of foundation.

4 Personal knowledge.

5 THE COURT: If you know.

6 THE WITNESS: Of the living room?

7 Q. Of the room where you were wrestling with that guy?

8 A. Me.

9 Q. Who?

10 A. Me.

11 Q. When you were by the front door and you all were trying to
12 get out, where did you hear gunshots coming from?

13 A. From the door, inside the house, and from Baby E shooting.

14 Q. You said inside the house. Was someone inside the house
15 other than Baby E shooting?

16 A. It sounded like somebody was shooting back at Baby E.

17 Q. You said it sounded like someone was shooting back at
18 Baby E?

19 A. Yes.

20 Q. During that time were you only facing the front?

21 A. Yes.

22 Q. Did you turn around at any point?

23 A. In the beginning. But then after they started shooting I
24 was just watching the door.

25 Q. So in the beginning you looked back?

E879CHR5

Baynes - direct

1 A. Yes.

2 Q. I want to move back to after the robbery. What happened
3 when you got to Quay Quay's grandmother's house?

4 A. His mother saw my wound and she just told me I got to go to
5 the hospital and she said she would take me but I told her I
6 could walk. So me and Quay Quay end up walking to the
7 hospital.

8 Q. Was anyone else there at the house?

9 A. Yes. Reckless was there once we got there.

10 Q. Did you have any conversation with Reckless at that point?

11 A. Yeah. He was just acting like he didn't know what was
12 going on. He was looking at my wound. And after that he just
13 left.

14 Q. Did you go to the hospital?

15 A. Yes.

16 Q. How did you get there?

17 A. I walked.

18 Q. About how far from the hospital is from Quay Quay's
19 grandma's house?

20 A. Right around the corner.

21 MR. NAWADAY: Ms. McInerney, can you please put up
22 Government Exhibit 251.

23 Q. Can you see the area where you saw L-1 that day?

24 A. On Dubois and Van Ness right in between St. Luke's and
25 Broadway.

E879CHR5

Baynes - direct

1 Q. Where did you go after L-1's again?

2 A. To my house.

3 Q. Where is that?

4 A. On Mill Street. That's up Broadway.

5 Q. Do you see it on this map?

6 A. Yes. It's across -- across town all the way up Ann Street
7 you can see Mill Street.

8 Q. And when you left L-1's, how did you get to your house?

9 A. I walked.

10 Q. About how long a walk is that?

11 A. About five minutes.

12 Q. Do you see where 54 Chambers Street is?

13 A. Yes.

14 Q. Where is that?

15 A. Down between First Street and Broadway, closer to First
16 Street.

17 Q. About where that A is?

18 A. Yes.

19 Q. I want to show you what's already in evidence, certain
20 clips from Government Exhibit 252.

21 MR. NAWADAY: Ms. McInerney can you play Government
22 Exhibit 252 and this is the First and Lander west view starting
23 at timestamp 00:17:20 just play it through 00:17:35.

24 (Video played)

25 Q. Do you recognize this street?

E879CHR5

Baynes - direct

1 A. Yes.

2 Q. What street is this?

3 A. First Street.

4 MR. NAWADAY: Pause it.

5 Q. Do you recognize anyone in this frame?

6 A. Yes.

7 Q. Who do you recognize?

8 A. Me, and Quay Quay. I got the black hoodie on with the gray
9 underneath and behind the two people in the front. And
10 Quay Quay is right beside me with the all-black hoodie on.

11 Q. How are you able to recognize yourself?

12 A. Because I remember what I was wearing.

13 Q. You were there?

14 A. Yes.

15 Q. Where were you walking at this moment?

16 A. Down First Street towards 54 Chambers.

17 Q. Is this before the robbery?

18 A. Yes.

19 Q. Is this after you caught up with everyone else?

20 A. Yes.

21 Q. And who do you remember walking next to?

22 A. Quay Quay.

23 Q. Do you see Quay Quay in this frame?

24 A. Yes. He's right next to me.

25 Q. I'm going to hand you what's been marked for identification

E879CHR5

Baynes - direct

1 as Government Exhibit 252K. Tell me if you recognize it.

2 A. Yes.

3 Q. Is that a still from the video we just saw?

4 A. Yes.

5 Q. At timestamp 00:17:35?

6 A. Yes.

7 MR. NAWADAY: Government offers Government Exhibit
8 252K.

9 MR. GOLTZER: No objection.

10 THE COURT: 252K will be received.

11 (Government's Exhibit 252K received in evidence)

12 Q. Do you remember who you were walking with towards 54
13 Chambers that night?

14 A. Yes.

15 Q. Who were the people?

16 A. Reckless, me, Bash, Quay Quay, Gucci, and Bow Wow, and
17 Baby E.

18 Q. Do you know who the people in front of you were at this
19 point?

20 A. The person in the black was Reckless.

21 Q. Do you know the person next to him?

22 A. No.

23 MR. NAWADAY: Ms. McInerney, if you can continue
24 playing and stop at timestamp 00:17:45.

25 Q. Is there anyone in this frame that you can recognize?

E879CHR5

Baynes - direct

1 A. Bash.

2 Q. Who is Bash?

3 A. He got the white hoodie under his jacket in the street.

4 Q. How are you able to recognize Bash?

5 A. I remember him having the white hoodie on.

6 Q. Do you remember anything else about what he was wearing
7 that night?

8 A. Yeah. He was all black but just the white hoodie under and
9 he had white gloves on.

10 Q. He had white what?

11 A. Gloves.

12 Q. Gloves?

13 A. Yes.

14 Q. Can you tell who the other two people are in this frame at
15 00:17:45?

16 A. No. I don't remember.

17 Q. I'm going to hand you what's been marked for identification
18 as Government Exhibit 252.

19 Is that a still of the video we just stopped at?

20 A. Yes.

21 MR. NAWADAY: The government offers Government Exhibit
22 252L.

23 THE COURT: L?

24 MR. NAWADAY: L.

25 THE COURT: Any objection?

E879CHR5

Baynes - direct

1 MR. GOLTZER: No.

2 MR. BUCHWALD: No.

3 THE COURT: 252L will be received.

4 (Government's Exhibit 252L received in evidence)

5 MR. NAWADAY: Ms. McInerney can you please play the
6 east view of Government Exhibit 252 starting at timestamp
7 00:17:20 and stopping at 00:17:40.

8 (Video played)

9 MR. NAWADAY: You can keep playing and stop at 17:42.

10 Q. Do you recognize anyone here?

11 A. Yes. Me and Quay Quay.

12 Q. Which person is you?

13 A. I'm closer to the wall and.

14 Q. And who is Quay Quay?

15 A. The one closer to the stop sign.

16 Q. Again, what street are we on?

17 A. This is Lander and First Street.

18 Q. Which street is First?

19 A. The one with the stop sign on, going down.

20 Q. And the cross street is Lander?

21 A. Lander, yes.

22 Q. Do you see there's an awning right there?

23 A. A what?

24 Q. Awning.

25 A. An awning?

E879CHR5

Baynes - direct

1 Q. Do you know what's on the corner, if anything, of Lander
2 and First?

3 A. A store.

4 Q. What kind of store?

5 A. A corner -- a corner, regular store.

6 Q. A corner store?

7 A. Yes.

8 Q. And can you see that corner store in this frame?

9 A. Yes.

10 Q. Where?

11 A. Right over my head.

12 Q. To your right?

13 A. Yes.

14 Q. Before we stop this frame, there are two people that pass
15 by you?

16 A. Yes.

17 Q. I'm sorry. Withdrawn.

18 Two people who were ahead of you?

19 A. Yes. Yes.

20 Q. Do you know who they were?

21 A. The first one was Reckless but I don't know -- I don't
22 remember the second one.

23 Q. I'm going to hand you what's been marked for identification
24 as Government Exhibit 252M.

25 Is this a still have the video we just saw at

E879CHR5

Baynes - direct

1 timestamp 00:17:42?

2 A. Yes.

3 MR. NAWADAY: Government offers Government Exhibit
4 252M.

5 THE COURT: Any objection?

6 MR. GOLTZER: No.

7 THE COURT: 252M will be received.

8 (Government's Exhibit 252M received in evidence)

9 MR. NAWADAY: Ms. McInerney, can you please continue
10 playing this video and stop at that time timestamp 00:17:52.

11 (Video played)

12 Q. Do you recognize anyone in the frame here?

13 A. Bash.

14 Q. Where is Bash?

15 A. In the street with the white hoodie.

16 Q. Again, which way is everyone walking?

17 A. Towards Chambers Street.

18 Q. I'm going to hand you what's been marked for identification
19 as Government Exhibit 252N.

20 Is this a photographic still of this video at
21 timestamp 00:17:50?

22 A. Yes.

23 MR. NAWADAY: Government offers Government Exhibit
24 252N.

25 MR. GOLTZER: No objection.

E879CHR5

Baynes - direct

1 THE COURT: 252N will be received.

2 (Government's Exhibit 252N received in evidence)

3 Q. By the way, on this corner of Lander and First Street,
4 about how far away are you from Chambers Street?

5 A. Like a block away, a block or two away.

6 MR. NAWADAY: Ms. McInerney, can we put up what's
7 already in evidence as Government Exhibit 264?

8 Q. Do you recognize this?

9 A. Yes.

10 Q. What intersection is this?

11 A. This is First Street and Chambers.

12 Q. Which street is Chambers?

13 A. The one going across.

14 Q. The one where the SUV is?

15 A. Yes.

16 Q. Which direction is Lander Street?

17 A. Straight ahead at that corner -- at the next corner.

18 Q. At the next corner?

19 A. Yes.

20 Q. Government Exhibit 261.

21 MR. NAWADAY: Ms. McInerney, can you please put that
22 up.

23 Q. Do you recognize this?

24 A. Yes.

25 Q. What are we looking at here?

E879CHR5

Baynes - direct

1 A. The house of 54 Chambers.

2 Q. Which one is 54 Chambers?

3 A. The door -- the white door -- the second apartment with the
4 white door.

5 Q. The building with the white door?

6 A. Yes.

7 Q. I'm going to hand you what's been marked for identification
8 as Government Exhibit 259.

9 Do you recognize that?

10 A. Yes.

11 Q. What do you recognize it to be?

12 A. The drawing of the inside of 54 Chambers.

13 Q. Is that a diagram of the inside of 54 Chambers?

14 A. Yes.

15 Q. Has this diagram been marked up with handwriting?

16 A. Yes.

17 Q. Do you recognize any of the handwriting on it?

18 A. Yes.

19 Q. Whose handwriting do you recognize?

20 A. Mine.

21 Q. Whose?

22 A. Mine.

23 Q. Do you know if this is an exact diagram, shows the exact
24 size of each of the rooms?

25 A. No.

E879CHR5

Baynes - direct

1 Q. But does it substantially depict where each of the rooms
2 were?

3 A. Yes.

4 Q. Did you -- are there any initials on this?

5 A. Yes.

6 Q. Whose initials do you recognize?

7 A. Mine.

8 MR. NAWADAY: Government offers Government Exhibit
9 259.

10 THE COURT: Any objection?

11 MR. GOLTZER: No.

12 MR. GREENFIELD: None.

13 THE COURT: 259 will be received. I'm sorry,
14 Mr. Greenfield?

15 MR. GREENFIELD: No objection.

16 (Government's Exhibit 259 received in evidence)

17 Q. Mr. Baynes, what are we looking at here?

18 A. The inside of the house, a drawing of it.

19 Q. Of 54 Chambers?

20 A. Yes.

21 Q. And you mentioned that there were initials you recognize?

22 A. Yes.

23 Q. Where are your initials?

24 A. On -- at the bottom of the paper.

25 Q. To the right and below the Government Exhibit label?

E879CHR5

Baynes - direct

1 A. Yes.

2 Q. And there are names written out on Government Exhibit 259.
3 Whose handwriting is that?

4 A. Mine.

5 Q. And then there are these black circles?

6 A. That's where everybody was standing.

7 Q. And when did you mark this up?

8 A. While I was in the -- what I was still in the state.

9 Q. When you were in state custody?

10 A. Yes.

11 Q. And was a detective present when you filled this out?

12 A. Yes.

13 Q. There are two black circles with "victims" underneath?

14 A. Yes.

15 Q. Do you see that?

16 A. Yes.

17 Q. The notation victims. What are those two black circles
18 supposed to represent?

19 A. Those are the people that grabbed me.

20 Q. Two of the people who were inside the house?

21 A. Yes.

22 Q. Now, there are two of them. Are there particular ones that
23 are being depicted there?

24 A. The one that was further to the left was the person that
25 stabbed me and the person that was further to the right is the

E879CHR5

Baynes - direct

1 one that Reckless was wrestling with.

2 Q. And you see there's an arrow coming out of a room to the
3 left --

4 A. Yes.

5 Q. -- of those dots for victims. Do you see that?

6 A. Yes. On the paper, yes.

7 MR. NAWADAY: Ms. McInerney if you could zoom out.
8 Thank you.

9 Q. Do you see the -- an arrow coming out of the room to the
10 left of where the victims are?

11 A. Yes.

12 Q. What is that supposed to represent?

13 A. That's where the guy who stabbed me. That's what room he
14 came out of.

15 Q. There's also going into the hallway, there's a dot and then
16 the name Baby E. What is the dot supposed to represent?

17 A. His location of where he was at, at the -- in the hallway.

18 Q. And then there's a dot and the name Reckless again. What
19 is that supposed to represent?

20 A. Where he was at.

21 Q. And am I right that each of the dots with the name next to
22 it is supposed to represent where each of those people were
23 standing?

24 A. Yes.

25 Q. And at what point in time were the people standing in these

E879CHR5

Baynes - direct

1 positions at set forth in this diagram?

2 A. Right when I came -- well I ran out of the living room.

3 Q. What were Bash and Bow Wow doing at that point?

4 A. Kicking at the door.

5 (Continued on next page)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E87nchr6

Baynes - direct

1 Q. What were Bash and Bow Wow doing at that point?

2 A. Kicking at the door.

3 Q. How close, again, was everyone at that time?

4 A. Everybody was in an arm's distance.

5 Q. Where was Gucci at that point?

6 A. He was behind me.

7 Q. Did there come a time when he went in front of you?

8 A. Yes.

9 Q. Around when did he do that?

10 A. After, once they realized they couldn't kick the door open,
11 they started pulling at the door, and Gucci went to help them.

12 Q. When Gucci went to help what did he do?

13 A. He just went in front of all of those people and he started
14 helping grabbing at the door.

15 Q. You said in front of you at that point?

16 A. Yes.

17 Q. What was he doing to help when he went in front of you?

18 A. Grabbing and pulling the door open.

19 Q. Was he doing anything else?

20 A. He was rotating, so after -- once they started rotating, he
21 was shooting, everybody was just shooting at the door,
22 grabbing, but they kept on rotating.

23 Q. Who is they again?

24 A. Bow Wow, Bash, and Gucci.

25 MR. NAWADAY: Ms. McInerney, can you please play

E87nchr6

Baynes - direct

1 Government Exhibit 252, the video clip of First and Lander, the
2 east view, starting at time stamp 00:24:50 and then stopping at
3 00:25:05.

4 (Video played)

5 Q. Do you recognize anyone in this frame at this point?

6 A. Yes.

7 Q. Who?

8 A. Me.

9 Q. Where are you?

10 A. Next to the stop sign.

11 MR. NAWADAY: Ms. McInerney, if you could back up and
12 stop at 00:25:04.

13 (Video played)

14 Q. Do you see yourself here?

15 A. Yes.

16 Q. Do you recognize anyone else in this frame?

17 A. Yes.

18 Q. Who?

19 A. Bash.

20 Q. Where is Bash?

21 A. Over in the street with the white hoody on under the black
22 hoody.

23 Q. I am showing to show you what's been marked for
24 identification as Government Exhibit 2520. Is that a still of
25 this video at time stamp 00:25:04?

E87nchr6

Baynes - direct

1 A. Yes.

2 MR. NAWADAY: The government offers Government Exhibit
3 2520?

4 MR. GOLTZER: No objection.

5 THE COURT: 2520 will be received.

6 (Government's Exhibit 2520 received in evidence)

7 Q. What street is this again?

8 A. First Street.

9 Q. In which direction is everyone running?

10 A. Up First Street towards the Johnson, Dubois Street area,
11 so --

12 Q. So away from Chambers?

13 A. Yes.

14 MR. NAWADAY: Ms. McInerney, can you please play now
15 Government Exhibit 252, the west view of First and Lander
16 starting at time stamp 00:25:00 and stopping at 00:25:06.

17 Q. Do you recognize anyone in the frame at this point?

18 A. Yes.

19 Q. Who?

20 A. Me and Bash.

21 Q. Where are you?

22 A. On the sidewalk.

23 Q. So the male without the hoody up on the bottom left-hand
24 corner?

25 A. Yes.

E87nchr6

Baynes - direct

1 Q. And where is Bash?

2 A. The last one in the street with the white hoody under the
3 black, sort of.

4 Q. I'm going to show you what's been marked for identification
5 as Government Exhibit 252P. Is this a still from the video
6 that we just saw at 00:25:06?

7 A. Yes.

8 MR. NAWADAY: The government offers Government Exhibit
9 252P.

10 MR. GOLTZER: No objection.

11 THE COURT: 252P will be received.

12 (Government's Exhibit 252P received in evidence)

13 Q. During this video when people are running away, is this
14 before or after the robbery?

15 A. After.

16 Q. Who are you running with?

17 A. Everybody that I came to rob, came there to rob people
18 with.

19 Q. Throughout these video clips, you recognize yourself and
20 Bash. The other people in the videos that you've seen, even
21 though you don't know who is who, again, who were you running
22 with? Who were the people you went to the robbery with and ran
23 away from the robbery with?

24 A. Bash, Reckless, Quay Quay, Gucci, Bow Wow and Baby E.

25 Q. Do you know what kind of guns everyone had at the robbery?

E87nchr6

Baynes - direct

1 A. No.

2 Q. Also, going back to, going to L-1's house.

3 A. Right.

4 Q. Why did you need help getting guns?

5 A. We didn't have any at the time.

6 Q. Do you know why you didn't have any at the time?

7 A. No.

8 Q. Do you know if Freaky was in jail at the time?

9 A. Yes.

10 Q. Why were you and Quay Quay just lookouts?

11 A. Neither of us had a gun, and like we -- I didn't get along
12 with Bash, so he didn't want me to be part of the robbery, so I
13 was supposed to stay lookout. Quay Quay was just doing,
14 helping me out.

15 Q. What happened when you got to the hospital?

16 A. After they took my clothes and everything, the cops came to
17 talk to me.

18 Q. Did you tell them what really happened?

19 A. No.

20 Q. Why not?

21 A. Because I didn't want to go to jail at the time.

22 Q. Was that the only reason?

23 A. And I was protecting myself and friends.

24 Q. Since you have been in jail, have you received any letters
25 from Reckless?

E87nchr6

Baynes - direct

1 A. Yes.

2 Q. I am going to show you what's been marked for
3 identification as Government Exhibit 311. You can take it out
4 of the envelope sleeve. Please take a look at that and tell me
5 if you recognize it.

6 A. Yes.

7 Q. What is it?

8 A. A letter that was wrote to me from Reckless.

9 Q. Where were you at the time you received this letter?

10 A. In MCC.

11 Q. At the federal jail?

12 A. Yes.

13 Q. How are you able to recognize it as a letter from Reckless?

14 A. The name, the envelope, and the handwriting.

15 Q. The handwriting?

16 A. Yes.

17 MR. NAWADAY: The government offers Government Exhibit
18 311.

19 THE COURT: Any objection?

20 MR. GREENFIELD: No objection.

21 MR. BUCHWALD: A limiting instruction.

22 THE COURT: 311 will be received.

23 (Government's Exhibit 311 received in evidence)

24 Q. Please turn to the last page of the letter. Please read
25 the last two sentences.

E87nchr6

Baynes - direct

1 A. "Love is love, but loyalty is everything. Loyalty over
2 all. Prada."

3 Q. Is Prada a name Reckless had used before?

4 A. Yes.

5 Q. What did you understand "loyalty is everything" to mean?

6 A. To don't snitch.

7 Q. To not what?

8 A. Snitch.

9 Q. I'm going to show you what has been marked for
10 identification as Government Exhibit 312.

11 Please take a look at that, and take it out of the
12 plastic envelope and tell us if you recognize it.

13 A. Yes.

14 Q. What is it?

15 A. A letter from Reckless.

16 Q. How are you able to recognize it?

17 A. The handwriting and the name on the envelope.

18 MR. GOLTZER: May we have a limiting instruction on
19 all of the letters.

20 THE COURT: Well, how many more letters are there,
21 Mr. Nawaday?

22 MR. NAWADAY: There's only one letter more. Actually,
23 I am going to retrieve what's been marked for identification as
24 Government Exhibit 312.

25 THE COURT: OK.

E87nchr6

Baynes - direct

1 Q. I will hand the witness instead Government Exhibit marked
2 for identification 313. Please take that out of the envelope,
3 what is been marked for identification Government Exhibit 313.

4 Do you recognize that?

5 A. Yes.

6 Q. What do you recognize it to be?

7 A. A letter sent from Reckless.

8 Q. Where were you when you received that letter?

9 A. MCC, federal holding center.

10 MR. NAWADAY: The government offers Government Exhibit
11 313.

12 THE COURT: Any objection?

13 MR. GREENFIELD: No.

14 MR. BUCHWALD: Your Honor, again, we ask that this not
15 be admitted against Mr. Thomas.

16 THE COURT: OK. Government's Exhibit 313 will be
17 received.

18 (Government's Exhibit 313 received in evidence)

19 Q. Turning to the last page of 313, please read what it says
20 on the bottom.

21 A. "Loyal to the bone."

22 Q. What do you understand that to mean?

23 A. That he's a loyal person, a loyal person.

24 Q. Did you take that as an instruction to do anything or not
25 do anything?

E87nchr6

Baynes - direct

1 A. Basically not snitch, too.

2 THE COURT: Ladies and gentlemen, you have heard
3 testimony from Mr. Baynes' concerning various letters that he
4 received from Mr. Christian while Mr. Baynes was incarcerated.
5 You can only consider this testimony against Mr. Christian in
6 deciding whether the government has proved him guilty. You
7 cannot consider these letters in any way as against Mr. Thomas
8 or Mr. Whitaker.

9 OK. Very well.

10 MR. NAWADAY: One moment, your Honor.

11 No further questions.

12 THE COURT: Very well.

13 Cross-examination.

14 MR. GOLTZER: Thank you.

15 THE COURT: Mr. Goltzer.

16 MR. GOLTZER: Your Honor, may I retrieve the exhibits?

17 THE COURT: Certainly.

18 CROSS EXAMINATION

19 BY MR. GOLTZER:

20 Q. Good afternoon, Mr. Baynes.

21 A. Good afternoon.

22 Q. We have never had a chance to speak to each other before,
23 have we?

24 A. No.

25 Q. My name is George Goltzer. I'm a lawyer, and I'm going to

E87nchr6

Baynes - cross

1 be asking you several questions for the rest of the day. OK?

2 A. Yes.

3 Q. You were just shown a few parts of a videotape where you
4 identified yourself on the videotape?

5 A. Yes.

6 Q. You couldn't even see your own face, could you?

7 A. No.

8 Q. So, if you didn't know what kind of clothing you were
9 wearing, you couldn't have identified yourself on the
10 videotape, could you? Just from looking at yourself you knew
11 what kind of clothes you wore?

12 A. Yes.

13 Q. You couldn't see your face?

14 A. No.

15 Q. You couldn't see Bash's face?

16 A. No.

17 Q. And you couldn't see Quay Quay's face?

18 A. No.

19 Q. So if you didn't remember what kind of clothing they were
20 wearing, it would be impossible to identify them on the
21 videotape even for you, is that correct?

22 A. Right.

23 Q. You couldn't have identified them unless you knew what kind
24 of clothes they had?

25 A. Yes.

E87nchr6

Baynes - cross

1 Q. And you have known them for a long time, is that right?

2 A. Yes.

3 Q. You have been friends with Quay Quay for quite a while,
4 haven't you?

5 A. Yes.

6 Q. You have known Quay Quay for a number of years?

7 A. Yes.

8 Q. You and Quay Quay used to see each other just about every
9 day, is that correct?

10 A. Yes.

11 Q. And it was Quay Quay who took you to the hospital after you
12 got hurt inside of the apartment at 54 Chambers Street, isn't
13 that correct?

14 A. Yes.

15 Q. And it was Quay Quay's grandma's house that you ran to when
16 you were trying to get away, is that correct?

17 A. Yes.

18 Q. And the one person you didn't want to get into trouble was
19 Quay Quay, is that right?

20 A. Yes.

21 Q. Because of all the people involved with you over the years
22 can we say that Quay Quay was your best friend?

23 A. Yes.

24 Q. And you were Quay Quay's best friend?

25 A. Yes.

E87nchr6

Baynes - cross

1 Q. You were not best friends with Bash, were you?

2 A. No.

3 Q. You were not best friends with Baby E, were you?

4 A. No.

5 Q. You weren't concerned about protecting Bash on the night of
6 the robbery, were you?

7 A. No.

8 Q. And you weren't concerned about protecting Baby E on the
9 night of the robbery, were you?

10 A. No.

11 Q. Now, in the beginning, when you got to the hospital, is it
12 fair to say that you knew you could get into trouble?

13 A. Yes.

14 Q. And you didn't want to get into trouble, did you?

15 A. No.

16 Q. When things went bad on the night that you went to the
17 hospital, you knew that Quay Quay could get into trouble,
18 right?

19 A. Yes.

20 Q. And you didn't want Quay Quay to get into trouble?

21 A. No.

22 Q. When you got to the hospital, you learned that there were
23 some other people there who were involved at 54 Chambers
24 Street, is that right?

25 A. When I was at the hospital?

E87nchr6

Baynes - cross

1 Q. Yes.

2 A. No.

3 Q. Did the police tell you at the hospital there's somebody
4 here who died?

5 A. No, not at first.

6 Q. Afterwards?

7 A. Not at first.

8 Q. Not at first. You got to the hospital shortly after
9 midnight, is that right?

10 A. I don't know the time.

11 Q. Whenever you got there, you had an injury?

12 A. Yes.

13 Q. What part of your body was hurt?

14 A. My lower back.

15 Q. Your lower back had suffered some stab wounds?

16 A. Yes.

17 Q. Did you know that you had not been shot?

18 A. Not at that time.

19 Q. So, as far as you were concerned right after you got to the
20 hospital, you had either been stabbed or been shot, you didn't
21 know which it was?

22 A. Yes.

23 Q. But you knew you had been hurt?

24 A. Yes.

25 Q. You knew you had been hurt during a robbery?

E87nchr6

Baynes - cross

1 A. Yes.

2 Q. You knew you could get into trouble for it?

3 A. Yes.

4 Q. You knew that the injury could connect you to the location
5 where there was trouble?

6 A. Yes.

7 Q. And you wanted to lie your way out of it, didn't you?

8 A. Yes.

9 Q. And it was your idea -- by the way, you expected that you
10 would be spoken to by the police, right?

11 A. Yes.

12 Q. Because there were police at the hospital?

13 A. Yes.

14 Q. You didn't know whether there were any victims at the
15 hospital at that point, right?

16 A. No.

17 Q. You didn't know how many people got hurt?

18 A. No.

19 Q. You knew that one guy probably got shot because you saw him
20 standing next to a building, is that right?

21 A. Yes.

22 Q. And that was someone you learned was joker?

23 A. Yes.

24 Q. And you told the police a lot of lies, didn't you?

25 A. Yes.

E87nchr6

Baynes - cross

1 Q. You told the police some things that were lies?

2 A. Yes.

3 Q. And you told the police some things that were true while
4 you were still at the hospital, is that correct?

5 A. Yes.

6 Q. So it's fair to say that what you did in an effort to keep
7 yourself from getting into trouble is you mixed lies with the
8 truth, is that correct?

9 A. Yes.

10 Q. And the lies that you told were in an effort to keep you
11 from getting arrested for serious crimes?

12 A. Yes.

13 Q. And the lies that you told were in an effort to keep Quay
14 Quay from getting arrested for serious crimes?

15 A. Yes.

16 Q. You don't remember the names of the detectives who
17 questioned you?

18 A. No.

19 Q. You don't remember the names of the police officers who
20 questioned you?

21 A. No.

22 Q. But would you agree that over the period of hours that you
23 were questioned you were questioned by a number of different
24 people?

25 A. Yes.

E87nchr6

Baynes - cross

1 Q. Some of them were police officers, is that correct?

2 A. Yes.

3 Q. And some of them were detectives, is that correct?

4 A. Yes.

5 Q. And the way you can tell the difference between a police
6 officer and a detective is that one of them is wearing a
7 uniform and one of them is dressed in a suit or plain clothing,
8 is that correct?

9 A. Yes.

10 Q. The first guy who talked to you, was he a patrolman or a
11 detective, if you remember?

12 A. A policeman, regular.

13 Q. There was a detective who spoke to you not long after that
14 who was wearing plainclothes, right?

15 A. Yes.

16 Q. And that was probably around 1, 1:30 in the morning?

17 A. I don't remember.

18 Q. It was about an hour after you got there or less?

19 A. Right.

20 Q. Is that true?

21 A. I don't remember the time.

22 Q. You don't remember how long you were there before you were
23 spoken to by the police?

24 A. No.

25 Q. But you do remember that you spoke to a detective not too

E87nchr6

Baynes - cross

1 long after you were there, when it was still dark out?

2 A. Yeah, it was still dark.

3 Q. Is that right?

4 A. Actually I don't even know. I was inside the building.

5 Q. So you don't know if it was light or dark?

6 A. Yeah.

7 Q. Was it before or after you had finished your medical
8 treatment?

9 A. That I talked to him?

10 Q. Yeah, the first one.

11 A. I don't think I went into medical -- they checked to see if
12 a bullet was in me, and then after that they stitched me up.

13 Q. When you spoke to the first detective did you tell him that
14 you were walking down the street with Quay Quay, you saw a
15 group of strange men, and you got shot?

16 A. I -- I told -- yeah, I told him.

17 Q. You told him that, didn't you?

18 A. I don't know exactly that, but I told him that I was
19 walking towards there and there was a robbery that was going
20 on.

21 Q. Did you tell the first detective you got shot on the
22 street?

23 A. I think. I don't remember.

24 Q. Do you remember?

25 A. I just said I don't remember.

E87nchr6

Baynes - cross

1 Q. You don't remember?

2 A. I said I think. I don't remember.

3 Q. Whatever you told the first detective was a lie?

4 A. Yes.

5 Q. It was an intentional lie by you to trick the police?

6 A. Yes.

7 Q. It was an intentional lie by you to avoid responsibility
8 for what you had done?

9 A. Uh --

10 Q. Do you understand the question?

11 A. Yes.

12 Q. Was it an intentional lie by you to avoid responsibility
13 for what you had done?

14 A. Yes.

15 Q. Because you knew when you were in the hospital that you
16 were guilty of taking part in a robbery?

17 A. Yes.

18 Q. And you knew how serious that was?

19 A. Yes.

20 Q. And you knew you could go to prison for it?

21 A. Yes.

22 Q. And you knew you were old enough to be treated as an adult
23 for it?

24 A. Yes.

25 Q. And you intentionally lied to the police?

E87nchr6

Baynes - cross

1 A. Yes.

2 Q. Then they came back to you a little while later, right?

3 A. Yes.

4 Q. And said, Listen, in words or substance, we're getting a
5 different story from somebody else. They told you that?

6 A. Yes.

7 Q. How many of them were there when they told you that?

8 A. Two.

9 Q. Detectives or plainclothes men?

10 A. Detectives.

11 Q. Did they sit you down at a table?

12 A. No.

13 Q. Where did this second interview take place?

14 A. It was at the hospital room.

15 Q. Where in the hospital?

16 A. In my room that I was being treated in.

17 Q. Was there a doctor there?

18 A. No.

19 Q. Was there a nurse there?

20 A. No.

21 Q. It was just you and two detectives in the middle of the
22 night?

23 A. Yes.

24 Q. Were you scared?

25 A. Yes.

E87nchr6

Baynes - cross

1 Q. Did you think you were in trouble?

2 A. Yes.

3 Q. And you still told them some lies, didn't you?

4 A. Yes.

5 Q. But they told you they wanted the truth, didn't they?

6 A. Yes.

7 Q. And you didn't give it to them, did you?

8 A. No.

9 Q. You told them that you were with Quay Quay and Bash and
10 Baby E in Newburgh earlier that day, didn't you?

11 A. No.

12 Q. Didn't you tell them that you were with those three men --
13 or boys -- by the way, how old was Quay Quay at this time, back
14 in 2010?

15 A. Like 15, 16.

16 Q. Did you know how old Bash was?

17 A. No.

18 Q. Did you know how old Baby E was?

19 A. No.

20 Q. You told the police at that time that Baby E and Bash
21 wanted to rob a drug spot, didn't you?

22 A. No, I don't remember saying that. No.

23 Q. You don't remember, or you say you didn't?

24 A. I don't think I said that, no.

25 Q. After you were arrested for murder in April of 2011, you

E87nchr6

Baynes - cross

1 were appointed a lawyer by the Court?

2 A. Yes.

3 Q. That is because you couldn't afford to hire your own?

4 A. Yes.

5 Q. You went to court with that lawyer, right?

6 A. Yes.

7 Q. And you pled not guilty?

8 A. Yes.

9 Q. As was your right, yes?

10 A. As what?

11 Q. As was your right. You said to the judge, I plead not
12 guilty?

13 A. Yes.

14 Q. And the judge told the prosecutor, You have to give this
15 man, Mr. Baynes, certain information, right? They gave you
16 papers?

17 A. Yes.

18 Q. And you went over the papers with your lawyer?

19 A. Actually, they didn't give me papers. They brung me to
20 court to show me papers sometimes.

21 Q. They brought you to court and showed you papers. At some
22 point in August of 2011, they actually brought you to court
23 where there was something called a hearing, is that correct?

24 A. I don't know if that's the date, but, yes.

25 Q. That was hearing where different people testified when you

E87nchr6

Baynes - cross

1 were there, is that right?

2 A. Yes.

3 Q. And the district attorney got to question those detectives
4 and police officers, is that correct?

5 A. Yes.

6 Q. And your lawyer got to question them, is that correct?

7 A. Yes.

8 Q. And you were there?

9 A. Yes.

10 Q. And you were able to hear everything?

11 A. Yes.

12 Q. And those detectives at that hearing or the police officers
13 at the hearing, the same way you did, swore to tell the truth
14 and nothing but the truth, so help them God? Do you remember
15 that? They took an oath?

16 A. I don't remember. I think.

17 Q. I'm sorry?

18 A. I don't remember. I think. I don't remember if they did.

19 Q. Wasn't the subject matter of that hearing the statements
20 that the police said you made to them in the hospital?

21 A. Yes.

22 Q. It was, right?

23 A. Yes.

24 Q. And those police officers testified about the statements
25 they say you told them in the hospital, is that correct?

E87nchr6

Baynes - cross

1 A. Yes.

2 Q. And was your lawyer given a copy of a transcript of that
3 particular hearing so you could read it?

4 A. No.

5 Q. You don't know?

6 A. I don't think.

7 Q. Do you remember receiving something known as a notice of
8 statements that repeated all the statements they said you made
9 to them in the hospital?

10 A. No.

11 Q. You never saw that?

12 A. No.

13 Q. When you were in the hospital with the police, you were
14 questioned for hours you said, is that correct?

15 A. Yes.

16 Q. How many different police questioned you over the period of
17 hours?

18 A. The first man I remember, the policeman, then the two
19 detectives. Then the next day it was like three of them that
20 came.

21 Q. Let's go through it, and for the jury's benefit let's talk
22 about the timing between the questioning, OK. Do you
23 understand what I want to do?

24 A. Yes.

25 Q. You got to the hospital?

E87nchr6

Baynes - cross

1 A. Yes.

2 Q. And you went to the emergency room?

3 A. Yes.

4 Q. You didn't know if you had been shot or stabbed?

5 A. Yes.

6 Q. You knew you were in trouble? Could be in trouble?

7 A. Could be in trouble.

8 Q. A patrolman came in and questioned you?

9 A. Yes.

10 Q. And then some time not too long after that two detectives
11 came in and questioned you?

12 A. Yes.

13 Q. And then you spent the night at the hospital?

14 A. Yes.

15 Q. And then sometime after it was light some number of
16 detectives came and questioned you again.

17 A. Yes.

18 Q. And the longest questioning took place after it was light?

19 A. Not -- when the two detectives came.

20 Q. I'm sorry?

21 A. When the two detectives came.

22 Q. Was that between like 9 o'clock in the morning and around
23 12 noon?

24 A. It was at night when the two detectives came.

25 Q. You were questioned the next day?

E87nchr6

Baynes - cross

1 A. Yes.

2 Q. How many detectives questioned you the next day?

3 A. It was around three.

4 Q. Were you in the same room?

5 A. No, they moved me.

6 Q. Where did they move you to?

7 A. Up the stairs.

8 Q. Into an office?

9 A. No. To a room that had a window so I could see when it as
10 day and night.

11 Q. Did you know what time it was?

12 A. I know the sun was out when the three detectives came.

13 Q. You didn't know what time it was?

14 A. No.

15 Q. Had you had much sleep that night?

16 A. Yeah. After they left, the first time --

17 Q. Did those detectives tell you you were in trouble?

18 A. They just told me they knew I was lying.

19 Q. Those detectives told you that they knew that you were
20 lying. Did they tell you why they knew you were lying?

21 A. Yes.

22 Q. What did they tell you?

23 A. They told me that whoever stabbed me said he stabbed me
24 inside the building; and in the street that I said that I
25 walked down on, that they had cameras on that street, and they

E87nchr6

Baynes - cross

1 knew I didn't walk down that street.

2 Q. So they told you they had cameras?

3 A. Yes.

4 Q. That is not something you knew when you first began to lie
5 to them?

6 A. No.

7 Q. You weren't happy to hear that, were you?

8 A. No.

9 Q. And they told you that they had a witness?

10 A. Yes.

11 Q. And that the witness told them that you had been stabbed
12 inside, right?

13 A. Yes.

14 Q. The first story you told them was that you had been stabbed
15 outside, right?

16 A. At the door.

17 Q. That wasn't true?

18 A. No.

19 Q. Then you told them that Quay Quay and Bash wanted to rob a
20 spot, but that you and Quay Quay didn't want anything to do
21 with it, right?

22 A. I don't remember saying that.

23 Q. Didn't you tell the police that you were with Baby E and
24 Quay Quay and Bash, and Baby E and Bash wanted to rob a drug
25 spot, but you and Quay Quay didn't want to do it?

E87nchr6

Baynes - cross

1 A. I don't remember saying that --

2 Q. I can't understand what you are saying?

3 A. I don't remember saying that. I don't think I said it.

4 Q. You don't think you said that?

5 A. I don't remember saying that.

6 Q. Were those detectives taking notes while you were talking?

7 A. One of them was.

8 Q. And they took notes for hours, right?

9 A. Yes.

10 Q. And there were several pages of notes?

11 A. I don't know.

12 Q. Didn't your lawyer tell you what they told you -- I will
13 withdraw that. Didn't you learn what they claimed you told
14 them?

15 A. Yes, later.

16 Q. Later? Didn't you learn that you told the detectives early
17 in the morning of December 15 that Baby E and Bash wanted to
18 commit a robbery?

19 A. No.

20 Q. Did Baby E and Bash want to commit a robbery?

21 A. I don't know. I don't -- I didn't -- I wasn't with them at
22 that time you are saying.

23 Q. Did you tell the police that you and Quay Quay didn't go
24 with Baby E and Bash to commit a robbery?

25 A. I don't -- I never said -- I don't know anything they

E87nchr6

Baynes - cross

1 was -- at that time I don't think I said that.

2 Q. When you were in the hospital, before the sun came up, do
3 you remember telling the police the name Bash?

4 A. Before the sun came up, no.

5 Q. Do you remember before the sun came up telling them the
6 name Baby E?

7 A. No.

8 Q. After the sun came up, did you tell them the name Bash?

9 A. Yes.

10 Q. After the sun came up, did you tell them the name Baby E?

11 A. Yes.

12 Q. After the sun came up, you weren't trying to protect Bash,
13 were you?

14 A. No.

15 Q. After the sun came up, you weren't trying to protect Baby
16 E, were you?

17 A. No.

18 Q. You told the police that Baby E was part of a robbery,
19 didn't you?

20 A. Yes.

21 Q. You told the police that Bash was part of a robbery, didn't
22 you?

23 A. Yes.

24 Q. That's because the police told you that they wanted the
25 truth, isn't that right?

E87nchr6

Baynes - cross

1 A. Yes.

2 Q. Was it true that Bash was part of a robbery?

3 A. Yes.

4 Q. Was it true that Baby E was part of a robbery?

5 A. Yes.

6 Q. You told the police that Baby E had a gun, didn't you?

7 A. I don't remember.

8 Q. Didn't you tell the police that Baby E and Bash had guns?

9 A. I don't remember.

10 Q. Didn't you tell the police that one of those two people had
11 a chrome or silver gun with a wheel?

12 A. I remember saying that after that day, but I don't remember
13 if I said it that day or not.

14 Q. Did you tell the police at any time before you were
15 arrested --

16 A. No.

17 Q. Can I finish the question.

18 Did you tell the police at any time before you were
19 arrested that either Bash or Baby E had a silver gun with a
20 wheel?

21 A. I don't remember. I don't think so.

22 Q. Did Bash have a silver gun with a wheel?

23 A. I think I saw Baby E with it, but --

24 Q. Did Baby E have a silver gun with a wheel?

25 A. That I -- I think I saw him with a silver gun with a wheel.

E87nchr6

Baynes - cross

1 Q. With a wheel?

2 A. Yes.

3 Q. You are no stranger to guns, are you?

4 A. No.

5 Q. You have carried guns for years?

6 A. Yes.

7 Q. You like to walk the street with guns?

8 A. Yes.

9 Q. You like to hold guns for other people?

10 A. Not really, no.

11 Q. You did hold guns for other people, and you're comfortable
12 with guns?

13 A. I didn't just go around holding guns for other people.

14 Q. You never did?

15 A. No.

16 Q. You never held a gun because anybody asked you to?

17 A. If a person gave it to me, when I asked them to hold it,
18 but they never just gave me a gun and told me to hold a gun.

19 Q. So there were times over the last few years before you were
20 in jail when you would ask people for guns?

21 A. Yes.

22 Q. And the reason you would ask people for guns is you wanted
23 to use the guns?

24 A. No. I just wanted to have it.

25 Q. You just liked having a gun?

E87nchr6

Baynes - cross

1 A. Yes.

2 Q. You feel comfortable in some way having a gun?

3 A. Yes.

4 Q. You feel safe in some way having a gun?

5 A. Yeah.

6 Q. You feel secure in some way having a gun?

7 A. Yes.

8 Q. That's the only reason that you would want to have a gun?

9 A. It's just like a bragging reason.

10 Q. I'm sorry?

11 A. A bragging reason.

12 Q. I can't hear you.

13 A. Like a flashy, bragging reason.

14 Q. It's bragging to have a gun?

15 A. At the time that's what I was thinking.

16 Q. How old were you the first time you had a bragging gun?

17 A. Like probably like 16.

18 Q. 16?

19 A. Yes.

20 Q. So that would be around 2009?

21 A. Yes.

22 Q. How many times do you think between 2009 and April of 2011
23 did you walk around the streets of Newburgh with bragging guns?

24 A. Like probably like three times.

25 Q. How many?

E87nchr6

Baynes - cross

1 A. Like three.

2 Q. Three times?

3 A. Yeah. Around three or four.

4 Q. Three or four times. That's it?

5 A. Yeah, that's it.

6 Q. How many times did you use guns in robberies?

7 A. When I rob people I never have a gun. It was usually,
8 like, people I'm with that have it.

9 MR. GOLTZER: Can we have that read back.

10 A. When I rob people, I never have guns on me. It's usually
11 the person I'm with.

12 Q. So when you rob people, you don't have guns, is that right?

13 A. Yes.

14 Q. But when you brag, you do have guns?

15 A. Right.

16 Q. You know the difference between a semiautomatic and a
17 revolver?

18 A. Yes.

19 Q. A semiautomatic has a clip, is that right?

20 A. Yes.

21 Q. Is that right?

22 A. Yes.

23 Q. A clip is a metal device in which you put bullets stacked
24 one on top of the other?

25 A. Yes.

E87nchr6

Baynes - cross

1 Q. And you put that into the semiautomatic, is that right?

2 A. Yes.

3 Q. And you can put one of those bullets up in what they call
4 the chamber, is that right?

5 A. Yes.

6 Q. And if you pull the trigger what happens?

7 A. It shoots.

8 Q. What does it shoot?

9 A. Bullets.

10 Q. And what happens to the clip when the first bullet goes out
11 of the gun?

12 A. I don't know.

13 Q. Doesn't another bullet go up?

14 A. I guess, yes.

15 Q. Have you ever fired a semiautomatic?

16 A. No.

17 Q. Have you ever fired a gun?

18 A. No.

19 Q. I'm sorry?

20 A. No.

21 Q. Yes or no?

22 A. No.

23 Q. A revolver has a wheel?

24 A. Yes.

25 Q. That's when you put the bullets in?

E87nchr6

Baynes - cross

1 A. Right.

2 Q. Did you ever see cowboy movies?

3 A. Yes.

4 Q. That's like the gun in the cowboy movies, is that correct?

5 A. Yes.

6 Q. And you told the police that Baby E had the silver gun with
7 the wheel, right?

8 A. Yes.

9 Q. And you told the police that Bash had the other gun, the
10 semiautomatic, right?

11 A. Yes.

12 Q. Is that right?

13 A. Yes.

14 Q. Was that true?

15 A. Yes. I think --

16 Q. When you told the police that Bash and Baby E had those
17 guns, you were telling the police the truth, right?

18 A. That I remember, yes.

19 Q. Because you were trying to get out of trouble by mixing
20 lies and truth?

21 A. Yes.

22 Q. One of the other lies you told the police is that you went
23 into the apartment after the man was shot and was lying on the
24 ground, right?

25 A. I don't know.

E87nchr6

Baynes - cross

1 Q. Didn't you tell them that?

2 A. I don't remember.

3 Q. You don't remember?

4 A. I don't think so.

5 Q. On December 15, at St. Luke's Hospital, 70 Dubois Street,
6 Newburgh, New York, did you have a conversation with a police
7 officer by name of Terrence Moore --

8 A. I don't know.

9 Q. -- in which you said to him in words or substance, I was
10 walking down Lander Street toward Broadway with Laquavious
11 Boykin. Did you tell him that?

12 A. I don't remember.

13 Q. Did you tell him you saw a group of black men running
14 toward you?

15 A. Yes.

16 Q. Was that true?

17 A. No.

18 Q. Did you tell him the next thing you knew that the unknown
19 black males were shooting at you? Did you tell him that?

20 A. Yes.

21 Q. Was it true?

22 A. No.

23 Q. A lie?

24 A. Yes.

25 Q. And you got shot in the back. You told them that?

E87nchr6

Baynes - cross

1 A. Yes.

2 Q. Was that true?

3 A. No.

4 Q. And you told them you walked to the hospital. Was that
5 true?

6 A. Yes.

7 Q. Did you have a conversation on December 15, 2010, at the
8 same hospital on the same evening with a detective named
9 Loscerbo, and did you tell him the following:

10 I'll take you through it one piece at a time. All
11 right, Mr. Baynes?

12 Did you tell Detective Loscerbo Bash and Baby planned
13 on robbing the weed spot at 54 Chambers Street?

14 A. It don't remember saying that.

15 Q. Will you admit or deny making that statement to Loscerbo?

16 A. I deny it.

17 Q. You deny it?

18 A. Yes.

19 Q. Did you tell Loscerbo they planned the robbery on Dubois
20 Street at about 10 p.m.?

21 A. I didn't know no times at that time, so, no.

22 Q. Would you admit or deny making the state?

23 A. Deny it.

24 Q. You deny it?

25 A. I don't remember saying it.

E87nchr6

Baynes - cross

1 Q. Did you tell him that Bash and Baby E had guns on them when
2 they were planning the robbery?

3 A. I don't remember saying that either at that time.

4 Q. I'm sorry?

5 A. I don't remember saying that either.

6 Q. Do you deny it or not remember it.

7 A. I don't remember saying it.

8 MR. GOLTZER: May I approach the witness?

9 THE COURT: You may.

10 MR. GOLTZER: Please take a look, Mr. Baynes, at the
11 document that I am placing in front of you. Read it to
12 yourself --

13 MR. NAWADAY: What exhibit number?

14 MR. GOLTZER: I'm sorry. 3501-4, the second page.
15 Please take a look at that document. Read it to yourself
16 silently, and when you have finished reading it, let me know.

17 (Continued on next page)

E879chr7

Baynes - cross

1 Q. Have you a chance to read the document?

2 A. Yes.

3 Q. Does that help you remember whether you told detective
4 Michael Loscerbo on December 15, 2010 at St. Luke's Hospital,
5 70 Dubois Street, Newburgh, New York, whether you told the
6 police that Bash and Baby had guns on them when they were
7 planning the robbery?

8 A. No.

9 Q. Doesn't help you remember at all?

10 A. No.

11 Q. Did you tell that detective in that same interview that
12 Bash and Baby E -- Bash and Baby told me and Laquavious to help
13 them rob the weed house but we went home and then went out
14 later to see if they got anything.

15 A. No.

16 Q. Never said it?

17 A. Not that I remember, no.

18 Q. Did you tell them that you saw a lot of people running,
19 Bash and Baby E were being chased by guys and that's when
20 somebody stabbed you?

21 A. No.

22 Q. You deny that?

23 A. No.

24 Q. You deny telling him that?

25 A. Yes.

E879chr7

Baynes - cross

1 Q. Did you tell the same detective in that same interview that
2 you heard shots?

3 A. When I was talking to the police officer I did tell him I
4 heard shots.

5 Q. Talking to who?

6 A. A police officer. I did tell him that I heard shots.

7 Q. At some point the police told you that they knew you were
8 lying?

9 A. Yes.

10 Q. Did you tell the police that you had nothing to do with the
11 robbery?

12 A. Yes.

13 Q. Did you tell the police that Laquavious, Quay Quay, had
14 nothing to do with the robbery?

15 A. Yes.

16 Q. Did you tell the police that it was Bash and Baby E who did
17 the robbery?

18 A. Yes.

19 Q. Was that true?

20 A. Yes. But not all of it. The end of it.

21 Q. What?

22 A. The part, Baby E and Bash had something to do with it.

23 Q. Well, you told them that they were shooting their guns,
24 didn't you?

25 A. (No response).

E879chr7

Baynes - cross

1 Q. You told the police they fired their guns?

2 A. I don't --

3 Q. When you were in the hospital you told them that Baby E and
4 Bash fired guns, didn't you?

5 A. Not that I remember.

6 Q. Have you ever used drugs?

7 A. Yes.

8 Q. What sorts of drugs?

9 A. Weed and E pills.

10 Q. E pills is what, ecstasy?

11 A. Yes.

12 Q. How old were you when you started to smoke weed?

13 A. Like 15.

14 Q. And you haven't been smoking weed while you're in jail?

15 A. No.

16 Q. Right?

17 A. No.

18 Q. But you smoked weed on a regular basis from the age of 15
19 until you got arrested at the age of 17?

20 A. Yes.

21 Q. You were dealing weed?

22 A. No.

23 Q. What?

24 A. No.

25 Q. What were you dealing?

E879chr7

Baynes - cross

1 A. Crack sometimes.

2 Q. Did you like weed?

3 A. Smoking it, yes.

4 Q. You smoked it as much as you could get it?

5 A. Yes.

6 Q. You smoked it as much as you could?

7 A. Yes.

8 Q. If you could get it in the morning you'd smoke it in the
9 morning?

10 A. Yes.

11 Q. If you could get it all day long you'd smoke it all day
12 long?

13 A. Yes.

14 Q. You did that for a couple of years?

15 A. Smoke -- yeah, smoked.

16 Q. And what's the most you ever smoked in a day?

17 A. Like I don't know, like around -- a quarter, I guess, I
18 don't know, a quarter of weed.

19 Q. A?

20 A. Quarter of weed.

21 Q. A quarter?

22 A. Yes.

23 Q. Are you talking about a quarter ounce?

24 A. Yes.

25 Q. And how many times could you smoke a quarter of an ounce in

E879chr7

Baynes - cross

1 the same day?

2 A. Once.

3 Q. Do you know what a spliff is?

4 A. No.

5 Q. Did you ever here a Jamaican use the word spliff?

6 A. No.

7 Q. Did you ever see a big marijuana cigarette or cigar?

8 A. Yes.

9 Q. Did you ever do those?

10 A. No.

11 Q. How many joints could you smoke in a day?

12 A. As many as I could.

13 Q. I'm sorry?

14 A. There is no limit. Any.

15 Q. Did you ever smoke five joints in a day?

16 A. Yes.

17 Q. Did you ever smoke ten joints in a day?

18 A. Yes.

19 Q. Did you ever smoke more than ten joints in a day?

20 A. Yes.

21 Q. What's the most joints you ever smoked in a day?

22 A. I don't know.

23 Q. How often would you smoke five joints in a day?

24 A. Like that's a -- like around everyday.

25 Q. How often -- you smoked at least five joints everyday?

E879chr7

Baynes - cross

1 A. Not at least. Probably -- that's probably -- yeah, around,
2 yeah, yes, yes.

3 Q. And were there days when you would smoke more than five
4 joints?

5 A. Yes.

6 Q. And E is ecstasy, right?

7 A. Yes.

8 Q. And how often did you use ecstasy?

9 A. Only on weekends.

10 Q. And did you find that smoking five or six or ten joints a
11 day had an effect on your ability to remember things?

12 A. I guess. I don't know really.

13 Q. I can't understand you. I'm very sorry.

14 A. I never, like it's not a proven fact but I think -- I don't
15 know.

16 MR. GOLTZER: May we have that read back. Maybe it's
17 my hearing. I just --

18 A. It's not a proven fact but I -- it might. I don't know.

19 Q. Oh, you said it's not a proven fact.

20 Is that right?

21 A. Yes.

22 Q. While it's not a proven fact, would you agree that smoking
23 five or ten joints a day clouds your mind -- your mind?

24 A. Clouds?

25 Q. Does it make things seem a little hazy to you?

E879chr7

Baynes - cross

1 A. No.

2 Q. A little razy to you?

3 A. No.

4 Q. You think your mind is better with or without the five to
5 ten joints a day?

6 A. I feel like it's the same, my mind.

7 Q. It's the same?

8 A. Yes.

9 Q. So the police told you that you were lying because they
10 knew you were inside?

11 A. Yes.

12 Q. And when they told you that -- you remember that?

13 A. Yes.

14 Q. And you remember that happening at the hospital?

15 A. Yes.

16 Q. And these were detectives?

17 A. Yes.

18 Q. Who were taking notes?

19 A. One of them was.

20 Q. And they were telling you different things while they were
21 asking you questions; is that correct?

22 A. Yes.

23 Q. And among the things they told you was as follows; for
24 example, you're in deep trouble?

25 A. I don't -- no, I don't --

E879chr7

Baynes - cross

1 Q. They never told you that?

2 A. No.

3 Q. Did they ever tell you that you were a suspect in a crime?

4 A. No.

5 Q. Do you ever -- do you remember receiving what are known as
6 Miranda warnings?

7 A. No.

8 Q. Did you ever hear the term Miranda warnings?

9 A. Miranda -- Miranda, not Miranda warning.

10 Q. Did you ever hear the words Miranda warnings?

11 A. Warnings?

12 Q. Yes.

13 A. Yes.

14 Q. And at some point the detectives said to you: Wait a
15 minute, we're going to read you your rights; is that correct?

16 A. No.

17 Q. They never read you your rights?

18 A. No.

19 Q. None of those detectives ever told you that you had a right
20 to remain silent?

21 A. No.

22 Q. None of those detectives ever told you you had a right to
23 an attorney?

24 A. No.

25 Q. None of those detectives ever told you that anything you

E879chr7

Baynes - cross

1 said could be used against you in a court of law?

2 A. No.

3 Q. And none of those detectives ever told you that if you
4 couldn't afford a lawyer they would get you one?

5 A. No.

6 Q. And none of those detectives ever told you that you could
7 stop the questioning at any time and consult with a lawyer if
8 you wanted to?

9 A. No.

10 Q. And none of those detectives ever asked you to sign
11 anything?

12 A. Yeah, they asked me to sign papers.

13 Q. What did they ask you to sign?

14 A. Pictures of Reckless, Bash and Baby E.

15 MR. GOLTZER: May I approach the witness?

16 THE COURT: You may.

17 Q. I'm handing you a document, Mr. Baynes. I would ask you to
18 look at it. And ask -- (pause) I would ask you to take a look
19 at that, Mr. Baynes.

20 Do you recognize that?

21 A. No.

22 Q. Have you ever seen it before?

23 A. No.

24 Q. Do you recognize the signature on the bottom?

25 A. Yes.

E879chr7

Baynes - cross

1 Q. Whose signature is that?

2 A. Mine.

3 Q. You signed it?

4 A. I don't know if I signed that but that's my signature.

5 MR. GOLTZER: I'd offer it, Judge, as Whitaker's A in
6 evidence.

7 THE COURT: Whitaker A in evidence?

8 MR. GOLTZER: Yes.

9 THE COURT: Any objection? Is there a 3500 number
10 affiliated with it?

11 MR. GOLTZER: It's 35 -- perhaps the government can
12 give it to you. I don't have it handy, Judge.

13 It's the second page of 3501-2 and I'm offering it in
14 evidence.

15 MR. NAWADAY: No objection.

16 THE COURT: Whitaker A will be received. Can we say
17 Defendant's A. Defendant's A.

18 (Defendant's Exhibit A received in evidence)

19 BY MR. GOLTZER:

20 Q. Mr. Whitaker, let me give you a copy -- Mr. Whitaker -- I
21 mean Mr. Baynes. Let me give you a copy of that and let's read
22 together. Okay.

23 At the bottom of the page do you see where it says the
24 word defendant?

25 A. Yes.

E879chr7

Baynes - cross

1 Q. And your name is next to it printed, Anthony Baynes.

2 Do you see that?

3 A. Yes.

4 Q. And it's your signature under it?

5 A. Yes.

6 Q. Signed by you; is that right?

7 A. That's my signature, yes.

8 Q. You put it there, didn't you?

9 A. No. I don't remember putting it there, but.

10 Q. I'm sorry?

11 A. I don't remember putting it there but that's my signature,
12 yes.

13 Q. You don't deny it's your signature?

14 A. No.

15 Q. And it looks like your real signature?

16 A. Yes.

17 Q. So it seems that you put it there?

18 A. All right.

19 Q. Can you agree with me that you put it there at some point?

20 A. No. I don't remember putting it there.

21 Q. You think I wrote it?

22 A. No. But there's computers.

23 Q. I'm sorry?

24 A. We have computers now.

25 Q. You think this is a computer signature?

E879chr7

Baynes - cross

1 A. I could take my signature off of a paper and put it on
2 another one.

3 Q. You think this is a forgery?

4 A. I don't know.

5 Q. Well let's see what it says.

6 It says Complaint No. and there's a complaint number
7 at the top next to it; is that correct?

8 A. Yes.

9 Q. And it says the word Miranda on top of it?

10 A. Yes.

11 Q. Did you think that was a woman's name?

12 A. No.

13 Q. What did you think it was?

14 A. I didn't see this paper. I don't know.

15 Q. You never saw this paper before?

16 A. No.

17 Q. You never -- so you signed something you never saw before?

18 A. I don't remember signing this.

19 Q. And it says Miranda warning on this piece -- this document
20 Whitaker's A in evidence, right?

21 A. It says Miranda, yes. Yes.

22 Q. And you see the number one?

23 A. Yes.

24 Q. "You have the right to remain silent and refuse to answer
25 questions. Do you understand?"

E879chr7

Baynes - cross

1 Do you see that question?

2 A. Yes.

3 Q. Did you answer that question yes?

4 A. No. I never -- I never was read my Miranda rights.

5 Q. And so the word yes appears next to it; that's something
6 that shouldn't be there?

7 A. That's not my handwriting up there either.

8 Q. The only handwriting on the form is your signature at the
9 bottom?

10 A. Yes.

11 Q. And No. 2. Let's read it together. "Anything you say may
12 be used against you in a court of law. Do you understand?"

13 That's on the form?

14 A. Yes.

15 Q. The word yes is there?

16 A. Yes.

17 Q. Not in your handwriting?

18 A. No.

19 Q. And three, "You have the right to speak to an attorney and
20 have him present during any questioning. Do you understand?"

21 That's on the form?

22 A. Yes.

23 Q. And the word yes is next to it?

24 A. Yes.

25 Q. That comes as a surprise to you?

E879chr7

Baynes - cross

1 A. Yes.

2 Q. And No. 4, "If you cannot afford an attorney, one will be
3 provided to you without cost. Do you understand?"

4 And it says yes. You never heard that?

5 A. No.

6 Q. "Have these rights in mind, do you wish to talk to us?"

7 And the answer is yes. That's No. 5.

8 You never said that?

9 A. No.

10 Q. So, it was witnessed, according to the document, the
11 Miranda was read to you by a Detective Joseph H. Cortez. Do
12 you see that on the document?

13 A. Yes.

14 Q. Was it true that Detective Cortez read you your Miranda
15 warnings?

16 A. No.

17 Q. And it says witnessed by Detective J. Staton S-T-A-T-O-N
18 and it's signed by him apparently.

19 Do you see that?

20 A. Yes.

21 Q. And is that true? Or is that false that he witnessed you
22 getting your Miranda warnings.

23 A. False.

24 Q. Never happened?

25 A. Never happened.

E879chr7

Baynes - cross

1 Q. But it did happen that those detectives questioned you?

2 A. Yes.

3 Q. Did they scare you?

4 A. They made me change my statement a couple times.

5 Q. They forced you?

6 A. No. They told me things that made me change it.

7 Q. What did they tell you?

8 A. To think about the camera and the person that stabbed me.

9 Q. What did they tell you about the camera?

10 A. That the side of the street, the side I was walking on has
11 a camera -- I mean they had a camera that showed -- that didn't
12 show me on that street.

13 Q. What did they tell you about the person who stabbed you?

14 A. That he said he stabbed me inside the house.

15 Q. Did they scare you?

16 A. I guess, yes.

17 Q. Did they tell you how much time you could do?

18 A. No.

19 Q. Did they tell you you could do time?

20 A. Yes.

21 Q. Did they tell you you could do a lot of time?

22 A. No.

23 Q. Did you ask them how much time you could do?

24 A. No.

25 Q. They told you you had to give up the people who committed

E879chr7

Baynes - cross

1 the robbery, right?

2 A. Yes.

3 Q. You gave up Baby E?

4 A. Yes.

5 Q. And you gave up Bash?

6 A. Yes.

7 Q. And that was in the hospital?

8 A. Yes.

9 Q. And in the hospital you never mentioned Bow Wow, right?

10 A. Not that I remember.

11 Q. And in the hospital you never mentioned Thomas, right?

12 A. Not that I remember.

13 Q. Now, once you found out that they had you inside, you
14 needed to give them a reason that you went inside that would
15 keep you from getting into trouble, right?

16 A. (No response).

17 Q. Is that right?

18 A. Yes.

19 Q. And it was then that you said to them: I wanted to make
20 sure somebody was okay inside; that's why I went inside.

21 Right?

22 A. No. I said I went to buy weed and that's why I went
23 inside.

24 Q. You told them you went to buy weed?

25 A. Yes.

E879chr7

Baynes - cross

1 Q. Did you tell them that you went inside to check on
2 Quay Quay's brother to see if he was okay? Yes or no?

3 A. After, yes.

4 Q. What?

5 A. After -- yes, after.

6 Q. Because that's when they didn't believe you, they told you
7 they didn't believe you about the grass, right?

8 A. About the --

9 Q. About going to buy weed?

10 A. Yes.

11 Q. So what's happening is you're in the hospital. Right?

12 A. Yes.

13 Q. And you know you're in trouble or could be in trouble,
14 right?

15 A. Yes.

16 Q. And you lie to the first cop you spoke to?

17 A. Yes.

18 Q. And they come back in and they tell you: We want the truth
19 this time.

20 Right?

21 A. Yes.

22 Q. And you lie to them again?

23 A. Yes.

24 Q. And then they come back in again. And they tell you: We
25 got you inside.

E879chr7

Baynes - cross

1 Right?

2 A. Yes.

3 Q. And you still lie to them?

4 A. Yes.

5 Q. You told them I went in to buy weed and I got robbed and
6 stabbed?

7 A. (No response).

8 Q. Right?

9 A. Yes.

10 Q. You lied to them three times in a row over a period of
11 hours, right?

12 A. Yes. Yes.

13 Q. You did. And then -- right?

14 A. That I lied to them?

15 Q. Yes. Repeatedly?

16 A. Yes.

17 Q. Are you a truthful person?

18 A. Yes.

19 Q. Would you lie in a courtroom to keep yourself out of
20 trouble?

21 A. No.

22 Q. On Monday we'll come back to the interviews in the hospital
23 but I want to ask you a few questions before 5:00 about the
24 deal that you made with the Orange County district attorney's
25 office.

E879chr7

Baynes - cross

1 You signed into an agreement with the Orange County
2 district attorney's office; is that right?

3 A. Yes.

4 Q. And that was on the day you pled guilty to the robbery that
5 you repeatedly told these police officers you had nothing to do
6 with, right?

7 A. Yes.

8 Q. And you wanted to make a deal, didn't you?

9 A. Yes.

10 Q. And you made a deal in August of 2011, right? In August --
11 in October of 2011?

12 A. I don't know the date.

13 Q. You don't remember the date?

14 A. No.

15 Q. Do you remember if there was snow on the ground or the sun
16 was shining?

17 A. No.

18 Q. But you were a happy man the day you got that deal, weren't
19 you?

20 A. No.

21 Q. What?

22 A. No.

23 Q. After you finish testifying against the people in this
24 courtroom you want to go home?

25 A. Yes.

E879chr7

Baynes - cross

1 Q. And you're hoping that that judge in Orange County is going
2 to sentence you to time served?

3 A. Yes.

4 Q. Time served meaning as long as you've been in jail since
5 April of 2011, that's it, you're done, you go home?

6 A. Yes.

7 Q. You're expecting that, aren't you?

8 A. Not expecting but hoping.

9 Q. Hoping. You think it's a realistic possibility?

10 A. Kinda, yeah.

11 Q. You do?

12 A. Yes.

13 Q. Anybody tell you there was a realistic possibility that you
14 would get time served?

15 A. No.

16 Q. What?

17 A. No.

18 Q. Nobody?

19 A. No.

20 Q. Where did you get the idea that it was a realistic
21 possibility?

22 A. Just people -- other people.

23 Q. What other people?

24 A. It's just -- just the thought like.

25 Q. Who told you you could get time served, policemen?

E879chr7

Baynes - cross

1 A. No.

2 Q. Detective?

3 A. No.

4 Q. FBI agent?

5 A. No.

6 Q. Who?

7 A. No one -- other inmates.

8 Q. Other inmates who knew what had happened to other
9 cooperators in other cases?

10 A. Yes.

11 Q. When you got indicted for murder in the second degree you
12 knew you were facing a life sentence, right?

13 A. Possible life, yes.

14 Q. With a mandatory minimum on that life sentence of between
15 15 and 25 years, correct?

16 A. No. I didn't know that.

17 Q. Did you ask your lawyer what you were facing?

18 A. Yes. But he never told me that.

19 Q. He refused to tell you what you were facing?

20 A. No. He just -- he was saying -- he was looking at --

21 MR. GREENFIELD: Judge, can the witness keep his voice
22 up, please.

23 THE WITNESS: He never said that. He just never said
24 that.

25 Q. Did you know that the penalty in New York State for a first

E879chr7

Baynes - cross

1 degree robbery is up to a maximum term of 25 years in the state
2 penitentiary?

3 A. No.

4 Q. Did you know that the maximum term for assault in the first
5 degree in New York state was 25 years in the state
6 penitentiary?

7 A. No.

8 Q. Did you know that acting in concert with others who had a
9 gun in New York state with the intent to use it unlawfully
10 carried a possible maximum penalty of fifteen years in a
11 penitentiary?

12 A. No.

13 Q. Weren't you told that by the judge on the day you pled
14 guilty that the maximum term of imprisonment was 25 years,
15 robbery in the first degree?

16 A. (No response).

17 Q. Didn't he tell you that?

18 A. No.

19 Q. Never happened?

20 A. No.

21 Q. By the way, this fellow Bow Wow, you -- when was the first
22 time you ever heard his name, his real name?

23 A. What you mean, his real name?

24 Q. What's his name?

25 A. Tyrell.

E879chr7

Baynes - cross

1 Q. Tyrell what?

2 A. I don't know.

3 Q. Well did anybody ever tell you his name was Whitaker?

4 A. No.

5 Q. When you pled guilty did you tell the judge I did something
6 with Tyrell Whitaker?

7 A. Yes.

8 Q. Well how did you know his name was Whitaker?

9 A. Because the paper that I signed to.

10 Q. Who told you his name was Whitaker?

11 A. The paper I signed to. It said everybody.

12 Q. Who gave it to you?

13 A. My lawyer.

14 Q. So your lawyer told you that there was somebody named
15 Whitaker?

16 A. My lawyer gave me a piece of paper that had Tyrell
17 Whitaker, in parentheses, Bow Wow on it.

18 Q. Your lawyer gave that to you.

19 How many times have you interviewed by the Orange
20 County police department before you pled guilty?

21 A. I don't know. Like five times around.

22 Q. How many detectives were there when you pled -- before you
23 pled guilty and were interviewed by them?

24 A. One that I can think of. One.

25 Q. Cortez?

E879chr7

Baynes - cross

1 A. Yes.

2 Q. That's the one you say never read you the Miranda rights?

3 A. Yes.

4 Q. That's the one you're saying lied when he put his name on
5 this form?

6 A. Yes.

7 MR. GOLTZER: Is this a good time to break, Judge?

8 THE COURT: It is.

9 Ladies and gentlemen, that concludes this week. We
10 don't sit tomorrow. I know some of you have had questions. We
11 will not be sitting next Friday either. So we will see you
12 Monday morning. I believe you were introduced to Ms. Rivera,
13 my courtroom deputy. She will be with us on Monday. So we
14 will see you bright and early Monday morning. Please plan on
15 being in the jury room no later than 9:25 a.m. so we can get
16 started on time. Until then have a very, very pleasant weekend
17 and please do not discuss the case, including on social media.

18 (Jury excused)

19 (Continued on next page)

20

21

22

23

24

25

E879chr7

Baynes - cross

1 (In open court)

2 THE COURT: Okay, Mr. Baynes you can step down.

3 (Witness excused)

4 MR. GOLTZER: May he be instructed not to discuss his
5 testimony with the government over the weekend.

6 THE COURT: I'm sure the government will not be
7 discussing.

8 MR. NAWADAY: Yes, your Honor. I will put that on the
9 record; that, of course, the government will not be contacting
10 the witness since he is on cross-examination over the weekend
11 and while he's on cross-examination.

12 THE COURT: However I do not prohibit parties from
13 discussing logistical matters with their witnesses.

14 MR. GOLTZER: I wasn't asking that, your Honor.

15 MR. NAWADAY: Your Honor, one logistical matter.

16 THE COURT: I'm sorry?

17 MR. NAWADAY: One logistical matter.

18 THE COURT: Certainly.

19 MR. NAWADAY: There is one witness we need to get on,
20 because she has vacation plans, on Monday. We'd like to be
21 safe. It's the ME, the medical examiner, Dr. Susan Ely. Not
22 knowing how long the cross-examination of Mr. Baynes will go,
23 we'd like to be safe and be able to call Dr. Ely out of order,
24 call her first thing in the morning so that she can get on and
25 off and then we can continue with Mr. Baynes. Unless defense

E879chr7

Baynes - cross

1 counsel believe that the cross is going to go until 5 p.m. on
2 Monday.

3 THE COURT: Is there an objection to taking Dr. Ely
4 out of order Monday morning?

5 MR. BUCHWALD: Just a second.

6 (Pause)

7 MR. NAWADAY: Monday afternoon is fine too, your
8 Honor.

9 MR. GOLTZER: We would prefer that she be called in
10 the afternoon.

11 THE COURT: Okay. So first thing after lunch Monday
12 afternoon.

13 MR. NAWADAY: That works.

14 THE COURT: Gentlemen? First thing after lunch Monday
15 afternoon?

16 MR. GOLTZER: Sure.

17 THE COURT: Very well.

18 Anything further?

19 MR. GOLTZER: I have nothing.

20 MR. NAWADAY: Not from the government.

21 MR. BAUER: No, your Honor.

22 THE COURT: Nothing more.

23 MR. BUCHWALD: How long is her direct? May we inquire
24 how long her direct is?

25 THE COURT: Gentlemen, how long will the direct of

E879chr7

Baynes - cross

1 Dr. Ely be?

2 MR. NAWADAY: Direct of Dr. Ely will be I expect
3 between 45 minutes to an hour tops.

4 THE COURT: Okay. Very well.

5 Gentlemen if there are any issues that come up over
6 the course of the weekend do e-mail or fax it in to chambers.
7 And if there's nothing more, we will see you at 9:00 Monday
8 morning.

9 Apparently there is something more. Mr. Buchwald?

10 MR. BUCHWALD: Just off the record.

11 (Discussion off the record)

12 (Adjourned to August 11, 2014 at 9:00 a.m.)

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

PETER FREDERICK	
-----------------	--

Cross By Mr. Greenfield	334
-----------------------------------	-----

Redirect By Mr. Bauer	366
---------------------------------	-----

Recross By Mr. Greenfield	381
-------------------------------------	-----

ANTHONY BAYNES	
----------------	--

Direct By Mr. Nawaday	383.
---------------------------------	------

Cross By Mr. Goltzer	517
--------------------------------	-----

GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

201, 202 and 203	389
----------------------------	-----

201A, 201B, 202B and 203B	390
-------------------------------------	-----

216A and 216B	391
-------------------------	-----

204 and 204B	392
------------------------	-----

205 and 205B	392
------------------------	-----

207, 207A and 207B	393
------------------------------	-----

208 and 208B	394
------------------------	-----

422	403
---------------	-----

209 and 211	412
-----------------------	-----

212	413
---------------	-----

206 and 206C and 220 and 220B	432
---	-----

218	438
---------------	-----

219	444
---------------	-----

301A and 905	458
------------------------	-----

1	252K	. . . . .	498
2	252L	. . . . .	500
3	252M	. . . . .	502
4	252N	. . . . .	503
5	259	. . . . .	505
6	252O	. . . . .	511
7	252P	. . . . .	512
8	311	. . . . .	514
9	313	. . . . .	516

DEFENDANT EXHIBITS

11	Exhibit No.	Received
12	A	555